

Passed by both Houses



New South Wales

Road Transport Bill 2013

Contents

	Page
Chapter 1 Preliminary	
Part 1.1 Introductory	
1 Name of Act	2
2 Commencement	2
3 Objects of Act	2
Part 1.2 Interpretation	
4 Definitions	3
5 References to "road" generally include "road related area"	16
6 Meaning of "road transport legislation"	16
7 Meaning of terms relating to registration	17
8 Meaning of terms relating to registered operators	17

	Page	
9	Determination of “first offence” and “second or subsequent offence”	18
10	Meaning of “responsible person” for a vehicle	20
11	Rights, liabilities and obligations of multiple responsible persons	20
12	Application of Acts Interpretation Act 1901 (Cth)	21
13	Notes	21
Part 1.3	Application	
Division 1	General	
14	General relationship with other laws	22
15	Statutory rules may disapply Roads Act 1993 in certain circumstances	23
16	Contracting out prohibited	23
17	Act to bind Crown	23
Division 2	Alteration of scope of operation of road transport legislation	
18	Power of Minister to include or exclude areas	23
19	Power of Minister to exclude vehicles, persons or animals	24
20	Minister to consult before making certain declarations	24
21	Statutory rules may exclude vehicles, animals and persons	24
22	Database of declarations and orders made under this Division	25
Chapter 2	Statutory rules	
23	General power to make regulations and rules	26
24	Examples of statutory rule-making powers	26
25	Incorporation of documents and modification of definitions	26
26	Offences in the statutory rules and certificate evidence	28
Chapter 3	Driver licensing	
Part 3.1	General functions of Authority in relation to driver licensing	
27	Maintenance of NSW driver licence register and other functions	29
28	Authority not to issue or renew licence in certain circumstances	29
29	Mutual recognition	30
30	Security of information in registers	31

	Page
Part 3.2 Demerit points system	
Division 1 NSW demerit points register and offences	
31 NSW demerit points register	31
32 Offences for which demerit points are incurred	32
Division 2 Consequences for unrestricted licence holders who incur demerit points	
33 Suspension of licence	33
34 Consequences in relation to licence applications	34
35 Licence ineligibility	34
36 Driver may elect to be of good behaviour as alternative	35
37 Deletion of demerit points	36
38 Suspension of licence—graffiti licence orders	37
Division 3 Consequences for learner or provisional licence holders who incur demerit points	
39 Consequences generally	38
40 Suspension or cancellation of licence	38
41 Licence ineligibility	39
Division 4 General matters relating to demerit points	
42 Determining demerit thresholds where combined licences are held	40
43 Demerit points penalties	41
Part 3.3 Interlock devices	
44 Definitions	41
45 Meaning of “approved interlock device”	42
46 Meaning of “approved interlock installer” and “approved interlock service provider”	42
47 Statutory rules concerning installation, maintenance and use of interlock devices	43
48 Financial assistance for use of approved interlock devices	44
Part 3.4 Offences concerning driver licensing	
Division 1 Unlawfully obtaining or using licences	
49 Obtaining driver licence by false statements	45
50 Unlawful possession of driver licence	45
51 Unlawful alteration or use of licence	46
52 Seizure of driver licences	46

		Page
Division 2 Driving without appropriate licence		
53	Driver must be licensed	47
54	Offences by disqualified drivers or drivers whose licences are suspended or cancelled	48
Part 3.5 Protection of stored photographs		
55	Photographs to which this Part applies	51
56	Purposes for which photographs may be kept and used	52
57	Release of photographs prohibited	53
Part 3.6 Other provisions relating to driver licensing		
58	Additional matters relating to identity	54
59	Cancellation or suspension of driver licence for certain speeding offences	55
60	Effect of expiry of driver licence during a suspension period	55
61	Evidence that person is professional driver	56
Chapter 4 Vehicle registration		
Part 4.1 Registration system for vehicles		
Division 1 Functions and powers of Authority		
62	Functions of Authority	57
63	Powers of Authority	57
Division 2 NSW registrable vehicles register		
64	Maintenance of NSW registrable vehicles register	58
65	Authority not to register registrable vehicles based outside this jurisdiction	59
Division 3 Devices, plates and documents		
66	Special number-plates	60
67	Ownership of devices, plates or documents	61
Part 4.2 Offences concerning vehicle registration		
Division 1 General offences		
68	Prohibition on using unregistered registrable vehicles	61
69	Obtaining registration or unregistered vehicle permits by false statements	62
70	Obligations of registered operators	62

	Page
71 Offences relating to identification numbers of engines and other vehicle parts	63
Division 2 Offences involving interstate number-plates and vehicles	
72 Definitions	63
73 Affixing of interstate number-plates on registrable vehicles in this jurisdiction	64
74 Operating interstate registered vehicles in this jurisdiction	64
75 Direction to provide documents concerning use of interstate registered vehicles	65
Part 4.3 Defective vehicles	
76 Defective registrable vehicles	66
77 Using registrable vehicles contrary to conditions or prohibitions under section 76	67
78 Use of dangerously defective motor vehicles	67
Part 4.4 Powers in relation to registrable vehicles	
79 Power to seize unregistered vehicles	68
80 Power of entry to inspect damaged vehicles	69
81 Seizure of number-plate	70
Part 4.5 Written-off vehicles	
Division 1 Preliminary	
82 Definitions	70
Division 2 Restrictions on registration of certain written-off vehicles	
83 NSW written-off vehicles register	71
84 Registration of written-off vehicles	72
85 Authority must refuse certain applications for authorisations	73
86 Applications for authorisations	73
Division 3 Assessment of damaged vehicles	
87 Definitions	74
88 Notifiable vehicles	74
89 Vehicles that are a total loss	75
90 Assessments as to whether a vehicle is a total loss	75
91 Factors relevant to assessments	75
92 Provision of results of assessments	76
93 Information about written-off and demolished vehicles	76

	Page
94 Maintenance of records	77
95 False assessments	78
96 Removal of vehicle identifiers	78
97 Duty to attach written-off warning label to written-off vehicles	78
Division 4 General	
98 Certificates of compliance	78
99 Access to NSW written-off vehicles register	79
100 Interference with NSW written-off vehicles register	80
101 Unauthorised disclosure of information	80
102 Certificate evidence	81
103 Statutory rules concerning written-off vehicles	81
104 Determination of first offences and second and subsequent offences against this Part	82
Part 4.6 Other provisions relating to vehicle registration	
105 Status of unregistered vehicles having permits	82
106 Fees for registration of vehicles of Crown and NSW Government agencies	82
Chapter 5 Safety and traffic management	
Part 5.1 Alcohol and other drug use	
Division 1 Interpretation	
107 Definitions	83
108 Prescribed concentrations of alcohol	86
109 Measurement of alcohol concentrations	86
Division 2 Offences involving alcohol or other drugs	
110 Presence of prescribed concentration of alcohol in person's breath or blood	87
111 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine	90
112 Use or attempted use of a vehicle under the influence of alcohol or any other drug	92
113 Detention of vehicle in certain cases	92
114 Testing for alcohol and other drug use	93
Part 5.2 Speeding and other dangerous driving	
Division 1 Speeding and other dangerous driving offences	
115 Races, attempts on speed records and other speed trials	93

	Page	
116	Conduct associated with road and drag racing and other activities	94
117	Negligent, furious or reckless driving	95
118	Menacing driving	96
Division 2 Speed measuring evasion articles		
119	Sale, purchase or use of prohibited speed measuring evasion articles	97
120	Surrender and forfeiture of prohibited speed measuring evasion articles	98
Part 5.3 Traffic control and monitoring		
Division 1 Interpretation		
121	Definitions	99
Division 2 Use of prescribed traffic control devices		
122	Appropriate authority for the purposes of this Division	100
123	Unauthorised prescribed traffic control devices	100
124	Removal of unauthorised prescribed traffic control devices	101
125	Cost of removal of prescribed traffic control device	101
126	Prescribed traffic control devices generally presumed to be lawful	101
Division 3 Use of average speeds to prove speeding offences		
127	Definitions	102
128	When Division may be relied on	102
129	Evidence and other matters that may be relied on	102
130	How average speed is to be calculated	103
131	How average speed limit is to be calculated	104
132	Certificate evidence concerning average speed calculations	104
133	Relationship of Division with other laws	105
Division 4 Approval of traffic enforcement devices		
134	Approval of devices by Governor	106
Division 5 Use of evidence obtained from approved traffic enforcement devices		
135	Definitions	107
136	Evidence of speed recorded by speed measurement devices	109
137	Certificates concerning reliability of speed measurement devices	109

	Page	
138	Admissibility of photographs taken by devices— generally	109
139	Admissibility of photographs taken by devices— unauthorised vehicle use offences	111
140	Evidence of accuracy and reliability not required if certificate tendered	112
141	Rebuttal of evidence concerning operation of approved traffic enforcement devices	112
 Part 5.4 Vehicle use and traffic safety		
Division 1 Dangers and obstructions to traffic		
142	Removal of dangers and obstructions to traffic	113
143	Removal of unattended motor vehicles or trailers from certain places	114
144	Removal of vehicles—incidental provisions relating to towing	117
Division 2 Traffic safety		
145	Offences involving death, injury or damage resulting from unsafe loads	117
146	Offence of failing to stop and assist after impact causing injury	119
Division 3 Unauthorised use of vehicles		
147	Motor vehicles or trailers not to be used without owner consent	120
148	Procuring or hiring of motor vehicle or trailer by fraud or misrepresentation	120
 Chapter 6 Road transportation		
Part 6.1 Monitoring of heavy vehicles and vehicles carrying dangerous goods		
149	Definitions	121
150	Application of this Part	122
151	Vehicles to be fitted with monitoring devices in working order	123
152	Vehicle movement record to be preserved	123
153	Vehicle movement record to be carried by driver	123
154	Inspection of monitoring devices and records carried on vehicles	124
155	Seizure of monitoring devices and records	125
156	Production of records by responsible persons	125
157	Tampering with monitoring devices or vehicle movement records	126

		Page
158	Exemptions	126
159	Evidence of vehicle movement record	126
Part 6.2	Speed limiting of heavy vehicles	
160	Definition	127
161	Application of Part	127
162	Vehicles to be speed limited	127
163	Certificate evidence of speed limiter compliance	128
164	Photographic evidence of speed of vehicle	128
165	Liability of offender for speeding offence and evidence of speed unaffected	129
Chapter 7	Compliance and enforcement	
Part 7.1	Authorised officers	
166	Authorised officers	130
167	Exercise of powers by authorised officers	130
168	Identification cards	130
169	Production of identification	131
170	Return of identification cards	132
171	Reciprocal powers of officers	132
172	Amendment or revocation of directions or conditions	133
173	Offences—obstructing, hindering or impersonating authorised officer	133
Part 7.2	Identity powers	
174	Expanded meaning of “driver”	134
175	Requirement for driver or rider to produce Australian driver licence and state name and address	134
176	Requirement for passenger to produce Australian driver licence and state name and address	135
177	Requirement for responsible person to disclose driver identity	135
178	Production of relevant Australian driver licence to court	136
179	Unauthorised demand for production of relevant Australian driver licence	136
Part 7.3	Criminal responsibility	
	Division 1 Liability for offences generally	
180	Multiple offenders for applicable road law offence	137
181	Double jeopardy	137

	Page
182 Liability of directors etc for offences by corporation— accessory to commission of offences	138
Division 2 Liability for camera recorded offences and parking offences	
183 Definitions	139
184 Responsible person for vehicle taken to have committed designated offences	141
185 When responsible person not liable for parking offence	142
186 Duty to inform if person not driver of vehicle committing camera recorded offence	143
187 When responsible person for vehicle not liable for camera recorded offence	143
188 Offences relating to nominations	143
189 Nominations by corporations	144
190 Use of statutory declarations as evidence	145
191 Application of this Division to average speed detected offences	146
192 Further identity information from nomination information provider	146
193 Liability of actual offender unaffected	147
194 Division does not derogate from any other law	147
Division 3 Penalty notices	
195 Penalty notices for certain offences	147
196 Service of penalty notices	149
197 Payment of penalty notices	149
198 Application of Fines Act 1996 to penalty notices under this Division	150
199 Effect of Division on other kinds of proceedings	150
Division 4 Proceedings for offences	
200 Proceedings for offences	150
201 Period within which proceedings for operator onus offences may be commenced	150
202 Period within which proceedings for certain mass, dimension and load offences may be commenced	150
203 Section 10 of Crimes (Sentencing Procedure) Act 1999 not applicable in certain circumstances	151
Part 7.4 Sanctions concerning licences	
Division 1 Licence disqualification	
204 Court may disqualify driver on conviction	152
205 Disqualification for certain major offences	153

	Page
206	156
207	158
Division 2 Use of interlock devices as alternative to disqualification	
208	159
209	160
210	160
211	162
212	162
213	162
214	163
215	163
Division 3 Habitual traffic offenders	
216	164
217	164
218	164
219	165
220	166
221	166
Division 4 Suspension of licences and visiting driver privileges	
222	166
223	167
224	167
225	170
Division 5 Downgrading of licences	
226	171
Part 7.5 Compensation orders	
227	171
228	171
229	172
230	172
231	173

	Page
232 Limits on amount of compensation	173
233 Costs	174
234 Enforcement of compensation order and costs	174
235 Relationship with orders or awards of other courts and tribunals	174
Part 7.6 Sanctions concerning vehicles	
Division 1 General	
236 Object and effect of Part	174
237 Definitions	175
Division 2 Additional sanctions for certain offences	
238 When additional sanctions may be imposed	176
239 Sanctions that may be imposed	177
240 Production notices	178
241 Powers and duties relating to seizure of motor vehicles and removal of number-plates	179
242 Removal, impounding and production of vehicle	180
243 Failure to comply with production notice	180
244 Number-plate and other offences	181
245 Forfeiture of vehicles on finding of guilt of offending operator	183
246 Commutation of forfeiture	183
247 Interested persons to be notified	184
248 Retention of motor vehicle impounded or number-plates confiscated under this Part	184
249 Early release of motor vehicle and number-plates on application to Local Court	184
250 Release of impounded vehicle and number-plates	185
251 Safe keeping of motor vehicles	186
252 Disposal and crash testing of vehicles	186
253 Protection from liability with respect to impounding, removal of number-plates and crash testing and other matters	186
254 Failure to prosecute	187
255 Search warrants	187
Part 7.7 Evidential provisions	
256 Application of Part	187
257 Certificate evidence	188
258 Proof of appointments and signatures unnecessary	191
259 Vicarious responsibility	192
260 Averments	193

		Page
261	Evidence regarding measuring and weighing	193
262	Evidence regarding weighing	194
263	Evidence regarding manufacturer's ratings	194
264	Evidence not affected by nature of vehicle or combination	195
265	Transport documentation and journey documentation	195
Part 7.8	Appeals and applications to Local Court	
266	Definitions	195
267	Appealable decisions may be appealed to Local Court	197
268	Determination of appeals against appealable decisions	198
269	Statutory rules may make provision for appeals and original applications	199
270	Finality of decisions	200
Chapter 8	Miscellaneous	
271	Fixing fees for services concerning driver licensing and vehicle registration	201
272	Power to repeal, revoke or make changes to approvals etc under this Act	201
273	Delegation of functions under road transport legislation	201
274	Unpaid fees and charges	202
275	Indemnity from personal liability for carrying out duties honestly and in good faith	202
276	Service of documents on persons generally	203
277	Lodgment of documents with Authority	204
278	Form of registers	204
279	Preliminary discovery of information for recovery of private car park fees	204
280	Review of Act	205
Schedule 1	Examples of statutory rule-making powers	206
Schedule 2	Registration charges for heavy vehicles	217
Schedule 3	Testing for alcohol and drug use	228
Schedule 4	Savings, transitional and other provisions	262

Road Transport Bill 2013

Contents

Page

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2013*



New South Wales

Road Transport Bill 2013

Act No , 2013

An Act to make provision with respect to road transport law in New South Wales.

See also the *Road Transport Legislation (Repeal and Amendment) Bill 2013* and *Road Transport (Statutory Rules) Bill 2013*.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

Chapter 1 Preliminary

Part 1.1 Introductory

1 Name of Act

This Act is the *Road Transport Act 2013*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act (cf DL Act, s 3; STM Act, s 3; VR Act, s 3)

The objects of this Act are as follows:

- (a) to consolidate in the one Act most of the existing statutory provisions concerning road users, road transport and the improvement of road safety in this jurisdiction,
- (b) to provide for the following in a manner consistent with the Agreed Reforms within the meaning of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* entered into by the Commonwealth, the States and the Territories:
 - (i) a driver licensing system as part of a uniform national approach to driver licensing (including uniform driver licence classes and licence eligibility criteria),
 - (ii) a vehicle registration system as part of a uniform national approach to vehicle registration and standards,
 - (iii) systems for the improvement of road safety and transport efficiency,
 - (iv) the reduction of costs relating to administering road transport,
- (c) to facilitate the recovery of expenses incurred in the administration of this Act (particularly, in connection with driver licensing and vehicle registration) and the collection of fees and charges payable under this Act and the statutory rules,
- (d) to provide for additional matters concerning the regulation of road users and road transport and the improvement of road safety in this jurisdiction that are not otherwise dealt with by the Agreed Reforms.

Part 1.2 Interpretation

4 Definitions (cf DL Act, s 17 and Dict; Gen Act, s 3; STM Act, Dict; VR Act, s 4)

(1) In this Act:

another jurisdiction means a jurisdiction other than this jurisdiction.

applicable road law has the same meaning as in the *Road Transport (Vehicle and Driver Management) Act 2005*.

applicable road law offence has the same meaning as in the *Road Transport (Vehicle and Driver Management) Act 2005*.

approved for average speed detection, approved for excess speed imaging, approved for speed measurement, approved for red traffic light detection or approved for traffic lane use detection in relation to an approved traffic enforcement device—see section 135 (2).

approved oral fluid analysing instrument—see clause 1 of Schedule 3.

approved oral fluid testing device—see clause 1 of Schedule 3.

approved road transport compliance scheme has the same meaning as in the *Road Transport (Vehicle and Driver Management) Act 2005*.

approved traffic enforcement device means a device of a type (or a combination of types of devices) approved under section 134.

Australian applicable road law means an applicable road law or a corresponding applicable road law.

Australian applicable road law offence means an offence against an Australian applicable road law.

Australian authorised officer means an authorised officer or a person appointed as an authorised officer under a corresponding applicable road law.

Australian Authority means the Authority or a corresponding Authority.

Australian driver licence means:

- (a) a driver licence, or
- (b) a licence, probationary licence, conditional licence, restricted licence, provisional licence or driver licence receipt (other than a learner licence) issued under a law in force in a State or internal Territory authorising the holder to drive a motor vehicle on a road or road related area.

Australian police officer means:

- (a) a police officer, or
- (b) a member (however described) of the police force or police service of another jurisdiction.

Australian registered operator in relation to a vehicle or combination—see section 8.

Australian registrable vehicles register means:

- (a) the NSW registrable vehicles register, or
- (b) a register maintained under the law of another jurisdiction that corresponds, or substantially corresponds, to the NSW registrable vehicles register.

Australian Transport Council means the Australian Transport Council referred to in section 4 of the *National Transport Commission Act 2003* of the Commonwealth, and includes any successor to or continuation of that body.

authorised officer means:

- (a) a police officer, or
- (b) a person appointed as an authorised officer, or person belonging to a class of persons appointed as authorised officers, under section 166 (Authorised officers), or
- (c) a person, or a person belonging to a class or description of persons, prescribed by the statutory rules.

body corporate includes the Crown in any capacity and any body or entity that is not an individual.

breath analysing instrument—see clause 1 of Schedule 3.

breath test—see clause 1 of Schedule 3.

capabilities of a vehicle means the functional capabilities of the vehicle or any of its components, as determined by the vehicle's manufacturer or by an Australian Authority, and includes:

- (a) its GCM and GVM, and
- (b) its speed capabilities.

class of a driver licence means a class of licence established by the statutory rules.

coach means a motor vehicle that is:

- (a) constructed principally to carry persons, and
- (b) equipped to seat more than 8 adult persons, and
- (c) used to convey passengers for hire or reward or in the course of trade or business.

combination means a group consisting of a motor vehicle connected to one or more other vehicles.

compensation order means an order under Part 7.5.

condition includes a restriction.

conditional licence means a licence issued as a conditional licence in accordance with the statutory rules.

conduct means an act, an omission to perform an act or a state of affairs.

corresponding applicable road law has the same meaning as in the *Road Transport (Vehicle and Driver Management) Act 2005*.

corresponding Authority means:

- (a) the Authority as defined in a corresponding applicable road law (except in the case of a jurisdiction for which a person is prescribed under paragraph (b)), or
- (b) a person prescribed by the statutory rules as the corresponding Authority for another jurisdiction for the purposes of this Act.

corresponding driver law means a law of another jurisdiction under which authority is given to drive motor vehicles on roads or road related areas.

corresponding law means:

- (a) a law of another jurisdiction corresponding, or substantially corresponding, to this Act or a specified provision or provisions of this Act, or
- (b) a law of another jurisdiction that is declared under the statutory rules to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act or a specified provision or provisions of this Act.

council means a council within the meaning of the *Local Government Act 1993*.

court means the court dealing with the matter concerned.

defective registrable vehicle means a registrable vehicle that does not comply with a vehicle standard that is prescribed by the statutory rules.

depot includes a base of operations.

drive includes:

- (a) be in control of the steering, movement or propulsion of a vehicle, and
- (b) in relation to a trailer, draw or tow the trailer, and
- (c) ride a vehicle.

driver means any person driving a vehicle, and includes any person riding a vehicle.

driver licence means:

- (a) a licence (including a conditional licence, a provisional licence and a learner licence) issued in accordance with the statutory rules authorising the holder to drive one or more classes of motor vehicle on a road or road related area, or

(b) a driver licence receipt.

driver licence receipt means a receipt that:

- (a) is issued following an application for an Australian driver licence and after payment of any applicable fee, and
- (b) authorises the holder to drive one or more classes of motor vehicle on a road or road related area.

drug means:

- (a) alcohol, and
- (b) a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, not being a substance specified in the statutory rules as being excepted from this definition, and
- (c) any other substance prescribed by the statutory rules as a drug for the purposes of this definition.

employee means an individual who works under a contract of employment, apprenticeship or training.

employer means a person who employs persons under:

- (a) contracts of employment, apprenticeship or training, or
- (b) contracts for services.

engage in conduct means:

- (a) do an act, or
- (b) omit to perform an act.

equipment, in relation to a vehicle or combination, includes tools, devices and accessories in or on the vehicle or combination.

extract from a record, device or other thing means a copy of any information contained in the record, device or other thing.

fatal accident means an accident on a road or road related area involving a motor vehicle that results in the death of one or more persons.

first offence—see section 9.

former corresponding provision, in relation to a provision of this Act or the statutory rules, means a repealed provision of another Act or a statutory rule made under another Act that corresponds (or substantially corresponds) to the provision of this Act or the statutory rules.

Note. For former road transport law in this jurisdiction, see for example, the Acts and statutory rules that constituted the **road transport legislation** within the meaning of the *Road Transport (General) Act 2005* or the repealed *Road Transport (General) Act 1999* and the provisions of the repealed *Traffic Act 1909* and the regulations made under that Act.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

garage address of a vehicle means:

- (a) if the vehicle is normally kept at a depot when not in use—the principal depot of the vehicle, or
- (b) if the vehicle is normally kept on a road or road related area when not in use:
 - (i) where the vehicle has one registered operator—the home address of the registered operator, or
 - (ii) where the vehicle has more than one registered operator and one or more of the operators reside in this jurisdiction—the home address of the registered operator residing in this jurisdiction whose address is nearest the road or road related area, or
 - (iii) where the vehicle has more than one registered operator and none of the registered operators reside in this jurisdiction—the suburb and road or road related area in this jurisdiction where the vehicle is normally kept, or
- (c) if the vehicle is normally kept at a place (other than a depot or a road or road related area) when not in use—the place where the vehicle is normally kept.

Note. See section 64 concerning the number of registered operators for a registrable vehicle that may be recorded in the NSW registrable vehicles register.

GCM (gross combination mass) of a motor vehicle means the greatest possible sum of the maximum loaded mass of the motor vehicle and of any vehicles that may lawfully be towed by it at one time:

- (a) as specified by the motor vehicle's manufacturer, or
- (b) as specified by the Authority if:
 - (i) the manufacturer has not specified the sum of the maximum loaded mass, or
 - (ii) the manufacturer cannot be identified, or
 - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate.

goods includes:

- (a) animals (whether alive or dead), and
- (b) a container (whether empty or not),

but does not include people, fuel, water, lubricants and equipment required for the normal operation of the vehicle or combination in which they are carried.

GVM (gross vehicle mass) of a motor vehicle means the maximum loaded mass of the vehicle:

- (a) as specified by the vehicle's manufacturer, or

- (b) as specified by the Authority if:
 - (i) the manufacturer has not specified a maximum loaded mass, or
 - (ii) the manufacturer cannot be identified, or
 - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate.

heavy combination means a combination that includes a heavy vehicle.

heavy vehicle means a motor vehicle or trailer that has a GVM of more than 4.5 tonnes, and includes:

- (a) a special purpose vehicle that has such a GVM, and
- (b) a passenger-carrying vehicle that has such a GVM.

heavy vehicle driver fatigue/speeding compliance provisions means the provisions referred to in paragraph (d) of the definition of **applicable road law** in section 3 (1) of the *Road Transport (Vehicle and Driver Management) Act 2005*.

home address of a person means:

- (a) in the case of an individual—the person's residential address or place of abode in Australia, or
- (b) in the case of a body corporate that has a registered office in Australia—the address of the registered office, or
- (c) in any other case—the address of the person's principal or only place of business in Australia.

horse includes any animal used for the carriage of persons or goods.

immediate licence suspension notice means a suspension notice given under section 224.

infringement penalty means a penalty imposed under a penalty notice or a notice of the same kind under an Australian applicable road law.

jurisdiction means the Commonwealth or a State or Territory.

learner licence means a licence or permit issued to a person under a law in force in a State or internal Territory to authorise the person to drive a motor vehicle on a road or road related area for the purpose of learning to drive a motor vehicle.

legal entitlements of a vehicle or combination (or component of a vehicle or combination) means the particulars of the entitlements, conferred by or under an Australian applicable road law, that authorise the vehicle or combination (or component) to be operated on a road or road related area, and includes:

- (a) any entitlements arising under or as affected by a permit, authorisation, approval, exemption, notice or anything else given or issued in writing under such a law, and

-
- (b) any entitlements arising under or as affected by restrictions, or by the application of restrictions, under an Australian applicable road law or other laws (for example, sign-posted mass limits for bridges, hazardous weather condition permits, and special road protection limits), and
 - (c) any entitlements arising under or as affected by an approved road transport compliance scheme.

light rail vehicle means:

- (a) a vehicle used on a light rail system within the meaning of the *Transport Administration Act 1988*, or
- (b) any other light rail system prescribed by the statutory rules.

load of a vehicle or combination, or in or on a vehicle or combination, means:

- (a) all the goods, passengers and drivers in or on the vehicle or combination, and
- (b) all fuel, water, lubricants and readily removable equipment carried in or on the vehicle or combination and required for its normal operation, and
- (c) personal items used by a driver of the vehicle or combination, and
- (d) anything that is normally removed from the vehicle or combination when not in use,

and includes a part of a load as so defined.

major offence means any of the following crimes or offences:

- (a) an offence by a person (the **offender**), in respect of the death of or bodily harm to another person caused by or arising out of the use of a motor vehicle driven by the offender at the time of the occurrence out of which the death of or harm to the other person arose, for which the offender is convicted of:
 - (i) the crime of murder or manslaughter, or
 - (ii) an offence against section 33, 35, 53 or 54 or any other provision of the *Crimes Act 1900*,
- (b) an offence against section 51A, 51B or 52AB of the *Crimes Act 1900*,
- (c) an offence against section 110 (1), (2), (3) (a) or (b), (4) (a) or (b) or (5) (a) or (b),
- (d) an offence against section 111, 112 (1) (a) or (b), 117 (2), 118 or 146,
- (e) an offence against section 117 (1) of driving a motor vehicle negligently (being driving occasioning death or grievous bodily harm),

- (f) an offence against clause 16 (1) (b), 17 or 18 of Schedule 3,
- (g) an offence of aiding, abetting, counselling or procuring the commission of, or being an accessory before the fact to, any crime or offence referred to in paragraph (a)–(f),
- (h) any other crime or offence that, at the time it was committed, was a major offence for the purposes of this Act, the *Road Transport (General) Act 2005*, the *Road Transport (General) Act 1999* or the *Traffic Act 1909*.

motor vehicle means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

national schedule of demerit points means the driving offences and corresponding demerit points prescribed in the statutory rules as comprising the national schedule of demerit points.

National Transport Commission means the National Transport Commission established under the *National Transport Commission Act 2003* of the Commonwealth (formerly the National Road Transport Commission established under the *National Road Transport Commission Act 1991* of the Commonwealth), and includes any successor to or continuation of that body.

NSW demerit points register—see section 31.

NSW driver licence register—see section 27.

NSW registrable vehicles register—see section 64.

NSW written-off vehicles register—see section 83.

owner:

- (a) in relation to a vehicle (including a vehicle in a combination)—means a person who:
 - (i) is the sole owner, a joint owner or a part owner of the vehicle, or
 - (ii) has possession or use of the vehicle under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vehicle to be registered in the name of someone else, or
- (b) in relation to a combination—means a person who:
 - (i) is the sole owner, a joint owner or a part owner of the towing vehicle in the combination, or
 - (ii) has possession or use of the towing vehicle in the combination under a credit, hire-purchase, lease or other agreement, except an agreement requiring the vehicle to be registered in the name of someone else.

passenger, in relation to a vehicle or combination, does not include a driver of the vehicle or combination or any person necessary for the normal operation of the vehicle or combination.

penalty notice means:

- (a) in relation to the provisions of Chapter 3:
 - (i) a penalty notice issued under Division 3 of Part 7.3, or
 - (ii) a penalty reminder notice issued under the *Fines Act 1996*, and
- (b) in relation to any other provisions of this Act—a penalty notice issued under Division 3 of Part 7.3.

photograph includes a digitised, electronic or computer generated image in a form approved by the Authority.

premises includes any structure, building, vessel or place (whether built on or not), and any part of any such structure, building, vessel or place.

prescribed illicit drug means any of the following:

- (a) delta-9-tetrahydrocannabinol (also known as THC),
- (b) methylamphetamine (also known as speed),
- (c) 3,4-methylenedioxymethylamphetamine (also known as ecstasy).

prescribed speeding offence means an offence against this Act or the statutory rules involving the use of a vehicle on a road or road related area at an excessive speed that is an offence prescribed by the statutory rules.

probationary licence means a licence to drive a motor vehicle:

- (a) issued to a person who applies for a driver licence following a period of disqualification from driving ordered by a court in Australia, or
- (b) issued to replace an equivalent licence issued under a corresponding driver law.

professional driver means a person whose primary work is personally driving a motor vehicle on roads or road related areas in or outside of this jurisdiction, and includes a person of a class prescribed by the statutory rules as a professional driver, but does not include a person of a class prescribed by the statutory rules as not a professional driver.

prohibited speed measuring evasion article means any device or substance that is designed, or apparently designed, to be fitted or applied to, or to be carried in, a motor vehicle or trailer for the purpose of detecting, interfering with, or reducing the effectiveness of, an approved traffic enforcement device that is approved for speed measurement, and includes a radar detecting device and a radar jamming device.

provisional licence means a licence (other than a learner licence) to drive a motor vehicle, issued under a law in force in a State or internal Territory, that is subject to conditions, restrictions or qualifications.

provisional P1 licence means a provisional P1 licence issued in accordance with the statutory rules.

provisional P2 licence means a provisional P2 licence issued in accordance with the statutory rules.

public authority means:

- (a) the Crown in any capacity, or
- (b) a body established by or under law, or the holder of an office established by or under law, for a public purpose, including a local government authority, or
- (c) a police force or police service.

public place includes a place:

- (a) of public resort open to or used by the public as of right, or
- (b) for the time being:
 - (i) used for a public purpose, or
 - (ii) open to access by the public, whether on payment or otherwise, or
- (c) open to access by the public by the express or tacit consent or sufferance of the owner of that place, whether the place is or is not always open to the public,

but does not include:

- (d) a track that at the material time is being used as a course for racing or testing motor vehicles and from which other traffic is excluded during that use, or
- (e) a road or road related area, or
- (f) a place declared by the statutory rules not to be a public place.

public safety means the safety of persons or property, including the safety of:

- (a) the drivers of and passengers in vehicles and combinations, and
- (b) persons in or in the vicinity of (or likely to be in or in the vicinity of) roads, road infrastructure and public places, and
- (c) vehicles and combinations and any loads in or on them.

radar detecting device means a device designed or apparently designed to be fitted to or carried in a motor vehicle or trailer for the purpose of detecting electromagnetic radiations from an approved traffic enforcement device that is approved for speed measurement.

radar jamming device means a device designed or apparently designed to be fitted to or carried in a motor vehicle or trailer for the purpose of interfering with the receiving by an approved traffic enforcement device that is approved for speed measurement of reflected electromagnetic radiations.

records means any documents or documentation, whether in paper, electronic or any other form.

registered and **registration** in relation to a vehicle—see section 7.

registered operator in relation to a vehicle or combination—see section 8.

registrable vehicle means:

- (a) any motor vehicle, or
- (b) any trailer, or
- (c) any other vehicle prescribed by the statutory rules for the purposes of this definition.

registration charge has the same meaning as in Schedule 2.

relevant Australian driver licence means:

- (a) an Australian driver licence, or
- (b) a learner licence issued under a law in force in a State or internal Territory authorising the holder to drive a motor vehicle on a road or road related area.

responsible person in relation to a vehicle—see section 10.

restricted licence means an authority to drive a motor vehicle issued at the direction of a court in Australia that authorises the holder to drive only in the course of the holder's employment or in other specified restricted circumstances.

rider of an animal includes a person having charge of the animal.

road means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

road infrastructure includes:

- (a) a road, including its surface or pavement, and
- (b) anything under or supporting a road or its surface or pavement and maintained by a roads authority, and
- (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of a road system or supporting a road, and
- (d) any bridge or other work or structure located above, in or on a road and maintained by a roads authority, and

- (e) any traffic control devices, railway or tramway equipment, electricity equipment, emergency telephone systems or any other facilities (whether of the same or a different kind) in, on, over, under or connected with anything referred to in paragraphs (a)–(d), and
- (f) anything declared by the statutory rules to be included in this definition,

but does not include anything declared by the statutory rules to be excluded from this definition.

road related area means:

- (a) an area that divides a road, or
- (b) a footpath or nature strip adjacent to a road, or
- (c) an area that is open to the public and is designated for use by cyclists or animals, or
- (d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles, or
- (e) a shoulder of a road, or
- (f) any other area that is open to or used by the public and that has been declared under section 18 to be an area to which specified provisions of this Act or the statutory rules apply.

road transport legislation—see section 6.

roads authority has the same meaning as in the *Roads Act 1993*.

second or subsequent offence—see section 9.

special purpose vehicle means:

- (a) a vehicle (other than one declared by the statutory rules not to be a special purpose vehicle for the purposes of this definition) where the primary purpose for which it was built, or permanently modified, was not the carriage of goods or passengers, or
- (b) a vehicle declared by the statutory rules to be a special purpose vehicle for the purposes of this definition.

specifications of a vehicle means the physical dimensions and other physical attributes of the vehicle and its fittings.

speed limiter offence means an offence against section 162.

the Authority means Roads and Maritime Services constituted under the *Transport Administration Act 1988*.

the statutory rules means the regulations and rules made by the Governor under this Act.

this jurisdiction means New South Wales.

threshold number of demerit points means:

- (a) for the holder of a learner licence or a provisional P1 licence—4 or more demerit points, and
- (b) for the holder of a provisional P2 licence—7 or more demerit points.

trader's plate means a number-plate issued by the Authority to a person engaged in a relevant trade to move unregistered registrable vehicles for short-term purposes.

traffic includes vehicular traffic and pedestrian traffic and all other forms of road traffic.

trailer means a vehicle that:

- (a) is built to be towed, or is towed, by a motor vehicle, and
- (b) is not capable of being propelled in the course of normal use on roads or road related areas without being towed by a motor vehicle,

whether or not its movement is aided by some other power source, but does not include:

- (c) a motor vehicle being towed, or
- (d) anything declared by the statutory rules to be excluded from this definition.

unregistered vehicle permit means a permit referred to in section 63 (d).

unrestricted driver licence means a driver licence other than a learner licence or provisional licence.

use of a vehicle includes standing the vehicle on a road or road related area.

vehicle means:

- (a) any description of vehicle on wheels (including a light rail vehicle) but not including any other vehicle used on a railway or tramway, or
- (b) any description of tracked vehicle (such as a bulldozer), or any description of vehicle that moves on revolving runners inside endless tracks, that is not used exclusively on a railway or tramway, or
- (c) any other description of vehicle prescribed by the statutory rules.

vehicle standard includes a standard or other requirement relating to the construction, design or equipment of a registrable vehicle.

working day means a day that is not a Saturday, Sunday or public holiday.

- (2) A reference in this Act to statutory rules made for the purposes of a provision of this Act is a reference to statutory rules made under this Act for or with respect to a matter that is required or permitted to be prescribed by the provision.
- (3) A reference in a provision of this Act relating to the road transport legislation (other than this Act or the statutory rules) to an expression that is defined in the legislation includes, for the purposes of the application of the provision to the legislation, the expression as defined in the legislation.
- (4) A reference in this Act:
 - (a) to the *Road Transport (General) Act 2005* is a reference to that Act as in force before it was renamed and amended by the *Road Transport Legislation (Repeal and Amendment) Act 2013*, or
 - (b) to the *Road Transport (General) Regulation 2005* is a reference to that Regulation as in force before it was renamed and amended by the *Road Transport (Statutory Rules) Act 2013*.

Note. The *Road Transport (General) Act 2005* was renamed as the *Road Transport (Vehicle and Driver Management) Act 2005* by the *Road Transport Legislation (Repeal and Amendment) Act 2013*. It was also amended to confine its operation to mass, dimension and load restraint requirements for heavy vehicles and other vehicles and to the regulation of certain other matters relating to heavy vehicles (such as driver fatigue management and heavy vehicle speeding compliance) pending the implementation in this jurisdiction of the proposed *Heavy Vehicle National Law*. Various compliance and enforcement provisions in the *Road Transport (General) Act 2005* for the road transport legislation generally have now been relocated to this Act. See, in particular, Chapter 7.

The *Road Transport (General) Regulation 2005* was also renamed as the *Road Transport (Vehicle and Driver Management) Regulation 2005* by the *Road Transport (Statutory Rules) Act 2013*, and its operation was similarly confined.

5 References to “road” generally include “road related area” (cf Gen Act, s 3 (3))

Each reference in this Act (except in this Part) to a *road* includes a reference to a *road related area*, unless otherwise expressly stated in this Act.

6 Meaning of “road transport legislation” (cf Gen Act, s 5)

- (1) In this Act, *road transport legislation* means the following:
 - (a) this Act and the statutory rules,
 - (b) the *Road Transport (Vehicle and Driver Management) Act 2005* and the regulations under that Act,
 - (c) the *Motor Vehicles Taxation Act 1988* and the regulations under that Act,

- (d) any other Act or statutory rule made under any other Act (or any provision of such an Act or statutory rule) that is prescribed by the statutory rules.
- (2) Statutory rules referred to in subsection (1) (d) prescribing an Act or statutory rule made under another Act (or provision of such an Act or statutory rule) cannot be made without the concurrence of the Minister administering the Act or statutory rule concerned.
- (3) A provision of this Act relating to the road transport legislation does not apply to the road transport legislation if that legislation provides otherwise either expressly or by necessary intendment.

7 Meaning of terms relating to registration (cf Gen Act, s 3 (1); STM Act, cl 1 of Dict; VR Act, s 4)

- (1) Except as provided by subsections (2) and (3), in this Act **registration** in relation to a vehicle means registration of the vehicle in the NSW registrable vehicles register, and **registered** has a corresponding meaning.
- (2) In this Act, **registration in Australia** in relation to a vehicle means registration of the vehicle in an Australian registrable vehicles register, and **registered in Australia** has a corresponding meaning.
- (3) In this Act, **registration in another jurisdiction** in relation to a vehicle means registration of the vehicle in an Australian registrable vehicles register (other than the NSW registrable vehicles register), and **registered in another jurisdiction** has a corresponding meaning.

8 Meaning of terms relating to registered operators (cf Gen Act, s 3 (1); VR Act, s 4)

- (1) Except as provided by subsections (2) and (3), in this Act a **registered operator** in relation to a vehicle means a person recorded in the NSW registrable vehicles register as the person responsible for the vehicle.
- (2) In this Act, an **Australian registered operator**:
 - (a) in relation to a vehicle (including a vehicle in a combination)—means a person recorded in an Australian registrable vehicles register as the person responsible for the vehicle, or
 - (b) in relation to a combination—means a person recorded in an Australian registrable vehicles register as the person responsible for the towing vehicle in the combination.
- (3) In this Act, a **registered operator in another jurisdiction**:
 - (a) in relation to a vehicle (including a vehicle in a combination)—means a person recorded in an Australian registrable vehicles

register (other than the NSW registrable vehicles register) as the person responsible for the vehicle, or

- (b) in relation to a combination—means a person recorded in an Australian registrable vehicles register (other than the NSW registrable vehicles register) as the person responsible for the towing vehicle in the combination.

9 Determination of “first offence” and “second or subsequent offence”

(cf DL Act, ss 25 (5) and 25A (11); Gen Act, s 96; STM Act, cl 2 of Dict)

(1) **Application of section**

This section applies to the determination of whether an offence against a provision of this Act or the statutory rules is:

- (a) a first offence, or
(b) a second or subsequent offence.

Note. The Act and the statutory rules provide in some cases for different penalties or disqualification periods, or for forfeitures, in connection with an offence depending on whether a particular offence is a first offence or a second or subsequent offence.

(2) **Second or subsequent offence**

If a person is convicted of an offence (the *new offence*) against a provision of this Act or the statutory rules, the new offence is a *second or subsequent offence* only if:

- (a) the person, within the applicable re-offending period (if any) for the offence concerned, was convicted of another offence (the *previous offence*) that was:
- (i) an offence against the same provision, or
(ii) an offence against a former corresponding provision, or
(iii) an equivalent offence to the new offence, and
- (b) the occasion when the new offence occurred was different from the occasion when the previous offence occurred.

(3) Except as provided by subsection (4), the *applicable re-offending period* for a particular offence for the purposes of subsection (2) (a) is:

- (a) the period of 5 years, or
(b) such other period as may be specified by a provision of this Act (in the case of offences against this Act) or the statutory rules (in the case of offences against the statutory rules) as the applicable re-offending period for the offence for the purposes of this section.

- (4) An offence does not have an applicable re-offending period if a provision of this Act (in the case of offences against this Act) or the statutory rules (in the case of offences against the statutory rules) specifies that there is no such period for the offence for the purposes of this section.
- (5) A previous offence is an *equivalent offence* to a new offence for the purposes of subsection (2) (a) (iii) if:
- (a) where the new offence is an offence against section 54 (1)—the previous offence was an offence against section 53 (3) or 54 (3) or (4) or a corresponding former provision or a major offence, or
 - (b) where the new offence is an offence against section 54 (3)—the previous offence was an offence against section 53 (3) or 54 (1) or (4) or a corresponding former provision or a major offence, or
 - (c) where the new offence is an offence against section 54 (4)—the previous offence was an offence against section 53 (3) or 54 (1) or (3) or a corresponding former provision or a major offence, or
 - (d) where the new offence is an offence against a provision of Chapter 5 or Schedule 3—the previous offence was a major offence, or
 - (e) a provision of this Act (in the case of offences against this Act) or the statutory rules (in the case of offences against the statutory rules) declares the offence to be an equivalent offence to another offence for the purposes of this section.
- (6) Without limiting subsection (5) (e), an offence against a law of another jurisdiction may be declared to be an equivalent offence for the purposes of this section.
- (7) In determining whether an offence is a second or subsequent offence, the following matters are immaterial:
- (a) the order in which the offences concerned are committed,
 - (b) whether or not the offences concerned were subject to the same penalties.
- (8) **First offence**
An offence against a provision of this Act or the statutory rules is a *first offence* if it is not a second or subsequent offence.
- (9) If the court is satisfied that a person is guilty of an offence but cannot determine (from the information available to the court) whether the offence is a first offence for which the person was convicted, the court may only impose a penalty for the offence as if it were a first offence.

10 Meaning of “responsible person” for a vehicle (cf Gen Act, s 6)

- (1) In the road transport legislation, the *responsible person* for a vehicle means:
- (a) in relation to a vehicle that is registered in Australia—each of the following persons:
 - (i) an Australian registered operator of the vehicle, except where the vehicle has been disposed of by the operator,
 - (ii) if the vehicle has been disposed of by a previous Australian registered operator—a person who has acquired the vehicle from the operator,
 - (iii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
 - (b) in relation to a vehicle to which a trader’s plate is affixed that is not registered in Australia—each of the following persons:
 - (i) the person to whom the trader’s plate is issued,
 - (ii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
 - (c) in relation to a vehicle that is not registered in Australia and to which no trader’s plate is affixed—each of the following persons:
 - (i) a person who was last recorded in an Australian registrable vehicles register as being responsible for the vehicle,
 - (ii) a person who has a legal right to possession of the vehicle (including any person who has the use of the vehicle under a lease or hire-purchase agreement, but not the lessor while the vehicle is being leased under any such agreement), and
 - (d) any other person (or class of persons) prescribed by the statutory rules for the purposes of this definition.
- (2) For the purposes of subsection (1) (d), the statutory rules may prescribe different persons for different provisions of the road transport legislation.

11 Rights, liabilities and obligations of multiple responsible persons (cf Gen Act, s 7)

- (1) Subject to any statutory rules made for the purposes of subsection (2), if more than one person is the responsible person for a vehicle at any one time, a reference in any relevant legislation to the responsible person for a vehicle within the meaning of this Act or any other road transport

legislation is taken to include a reference to each person who is a responsible person for such a vehicle.

- (2) The statutory rules may provide for the determination of the respective rights, liabilities and obligations of each responsible person for a vehicle under any relevant legislation, but only with the concurrence of the Minister administering the relevant legislation.
- (3) In this section:
relevant legislation means:
 - (a) a provision of the road transport legislation, or
 - (b) a provision of any other Act (or a provision of a statutory rule made under any such Act) concerned with the responsible person for a vehicle within the meaning of this Act or any other road transport legislation.

12 Application of Acts Interpretation Act 1901 (Cth) (cf DL Act, s 5; STM Act, s 6; VR Act, s 5)

- (1) The statutory rules may apply (whether with or without modifications) any or all of the provisions of the *Acts Interpretation Act 1901* of the Commonwealth to the interpretation of:
 - (a) this Act or the statutory rules (or specified provisions of this Act or the statutory rules), or
 - (b) any instrument made under this Act or the statutory rules (or specified provisions of any such instrument).
- (2) This section does not prevent the *Interpretation Act 1987* from applying to any provision of this Act or the statutory rules (or of an instrument made under this Act or the statutory rules) to the extent that it can do so consistently with the application of the *Acts Interpretation Act 1901* of the Commonwealth to any such provision by a statutory rule referred to in subsection (1).

13 Notes

Notes included in this Act do not form part of this Act.

Note. For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention ("cf") to equivalent or comparable (though not necessarily identical) provisions of other Acts and statutory rules (as in force immediately before the enactment of this Act). Abbreviations in these notes include the following:

- (a) **DL Act** is a reference to the *Road Transport (Driver Licensing) Act 1998* No 99,
- (b) **Gen Act** is a reference to the *Road Transport (General) Act 2005* No 11,
- (c) **Gen Reg** is a reference to the *Road Transport (General) Regulation 2005*,

- (d) **STM Act** is a reference to the *Road Transport (Safety and Traffic Management) Act 1999* No 20,
- (e) **STM Reg** is a reference to the *Road Transport (Safety and Traffic Management) Regulation 1999*,
- (f) **VR Act** is a reference to the *Road Transport (Vehicle Registration) Act 1997* No 119.

Part 1.3 Application

Division 1 General

14 General relationship with other laws (cf Gen Act, s 14)

(1) **Other Acts and laws not affected except as provided by this section**

Subject to this section, nothing in the road transport legislation:

- (a) affects any of the provisions of any other Act or any statutory rule made under any other Act, or takes away any powers vested in any person or body by any other Act or statutory rule made under any other Act, except as provided by this section, or
- (b) affects any liability of any person at common law except to the extent that the road transport legislation provides otherwise either expressly or by necessary intendment.

(2) **This Act and statutory rules to be interpreted as generally prevailing over other legislation in cases of inconsistency**

An Act that forms part of the road transport legislation is to be construed as prevailing over any other Act to the extent of any inconsistency unless the other Act provides otherwise either expressly or by necessary intendment.

(3) An Act that forms part of the road transport legislation is to be construed as prevailing over any statutory rule made under any other Act to the extent of any inconsistency unless the other Act provides otherwise either expressly or by necessary intendment.

(4) A statutory rule that forms part of the road transport legislation is to be construed as prevailing over any other Act or statutory rule made under another Act to the extent of any inconsistency in respect of driver licensing, vehicle registration or traffic on roads (or other related matters) unless the other Act provides otherwise either expressly or by necessary intendment.

(5) **Statutory rules may displace operation of subsections (2)–(4)**

Despite subsections (2)–(4), the statutory rules may provide that any other Act or a statutory rule (or any provision of another Act or statutory rule) is to be construed as prevailing over an inconsistent provision of the road transport legislation.

Note. The expression **statutory rule** is defined in section 21 (1) of the *Interpretation Act 1987* to mean:

- (a) a regulation, by-law, rule or ordinance:
 - (i) that is made by the Governor, or
 - (ii) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor, or
- (b) a rule of court.

15 Statutory rules may disapply Roads Act 1993 in certain circumstances

(cf Gen Act, s 12)

For the purpose of facilitating the administration and enforcement of the road transport legislation, the statutory rules may provide that any specified provision of the *Roads Act 1993* (or any specified statutory rule made under any provision of that Act) does not apply to a vehicle, person or animal (or any class of vehicles, persons or animals) to the extent specified by the statutory rules.

16 Contracting out prohibited (cf Gen Act, s 9)

A term of any contract or agreement that purports to exclude, limit or modify the operation of this Act or of any provision of this Act is void to the extent that it would otherwise have that effect.

17 Act to bind Crown (cf DL Act, s 6; Gen Act, s 8; STM Act, s 5; VR Act, s 23)

This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament of this jurisdiction permits, the Crown in all its other capacities.

Division 2 Alteration of scope of operation of road transport legislation

18 Power of Minister to include or exclude areas (cf Gen Act, s 15)

- (1) The Minister may declare, by order published in the Gazette, that the road transport legislation, or any specified provision of the road transport legislation:
 - (a) applies to a specified area of this jurisdiction that is open to or used by the public, or

(b) does not apply to a specified road.

Note. The Minister may amend, rescind, revoke or repeal an order made under this section. See section 43 of the *Interpretation Act 1987* and the definition of **repeal** in section 21 of that Act.

(2) The declaration has effect until it is rescinded, revoked or repealed, or for the period specified in the declaration.

19 Power of Minister to exclude vehicles, persons or animals (cf Gen Act, s 16)

(1) The Minister may declare, by order published in the Gazette, that the road transport legislation (or a specified provision of the road transport legislation) does not apply to a vehicle, person or animal in any location or circumstance specified in the order.

Note. The Minister may amend, rescind, revoke or repeal an order made under this section. See section 43 of the *Interpretation Act 1987* and the definition of **repeal** in section 21 of that Act.

(2) The declaration has effect until it is rescinded, revoked or repealed, or for the period specified in the declaration.

20 Minister to consult before making certain declarations (cf Gen Act, s 17)

Before making a declaration under this Division in respect of Chapter 4 (Vehicle registration), or any statutory rules made for the purposes of that Chapter, the Minister is to consult with the Minister administering the *Motor Accidents Compensation Act 1999*.

21 Statutory rules may exclude vehicles, animals and persons (cf DL Act, s 20 (2) (k) and (l); Gen Act, s 13; STM Act, s 72; VR Act, s 16)

(1) The statutory rules may:

(a) exempt a vehicle, person or animal (or a class of vehicles, persons or animals of a kind) identified in the statutory rules from the operation of this Act or the statutory rules (or specified provisions of this Act or the statutory rules), and

(b) authorise the Authority to exempt a vehicle, person or animal (or a class of vehicles, persons or animals of a kind) identified in the statutory rules from the operation of this Act or the statutory rules (or specified provisions of this Act or the statutory rules), and

(c) without limiting paragraphs (a) and (b), provide that this Act or the statutory rules (or specified provisions of this Act or the statutory rules) do not apply to a driver or a class of drivers.

(2) An exemption granted by or under the statutory rules as referred to in subsection (1) may be given unconditionally or on specified conditions.

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- (3) The statutory rules may provide for the Authority to do either or both of the following:
- (a) to suspend the operation of any statutory rule referred to in subsection (1) in such manner and in such circumstances as may be specified by the statutory rules,
 - (b) to suspend the operation of an exemption, or to revoke an exemption, given by it to any vehicle, person or animal in such manner and in such circumstances as may be specified by the statutory rules.

22 Database of declarations and orders made under this Division (cf Gen Act, s 18)

- (1) The Authority is to maintain a database, in accordance with the statutory rules, containing information about declarations and orders made under this Division that are in force from time to time.
- (2) The database may be kept in the form of, or as part of, a computer database or in such other form as the Authority considers appropriate.
- (3) The Authority is to give members of the public access to information contained in the database in accordance with the statutory rules.
- (4) A failure by the Authority to comply with this section does not affect the validity of any declaration or order.

Chapter 2 Statutory rules

- 23 General power to make regulations and rules** (cf DL Act, s 19 (1); Gen Act, s 10 (1); STM Act, ss 71 (1) and 72A; VR Act, s 14 (1))
- (1) The Governor may make regulations and rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
 - (2) Without limiting section 43 of the *Interpretation Act 1987*, the rules may amend or repeal the regulations and the regulations may amend or repeal the rules.
Note. Section 43 of the *Interpretation Act 1987* provides that if an Act confers a power on any person or body to make a statutory rule, the power includes power to amend or repeal any statutory rule made in the exercise of that power.
 - (3) A reference in any other Act or law to a matter prescribed by the rules or regulations under this Act (however expressed) includes a reference to a matter prescribed by the statutory rules.
 - (4) The same legal rules and principles apply to the resolution of an inconsistency between a rule and a regulation as apply to the resolution of an inconsistency between regulations.
- 24 Examples of statutory rule-making powers** (cf DL Act, s 20 (4) and (5); STM Act, s 71 (2) and (11))
- (1) Without limiting section 23 or any other provision of this Act conferring a power to make statutory rules, the statutory rules may make provision for or with respect to the matters set out in Schedule 1 (Examples of statutory rule-making powers).
 - (2) Without limiting Schedule 1 or any other provision of this Act conferring a power to make statutory rules in relation to fees, the statutory rules may impose a fee in respect of services provided by the Authority under this Act or the statutory rules despite the fact that the fee may also comprise a tax.
 - (3) A provision of the statutory rules made for the purposes of clause 1 (2) (g) of Schedule 1 has effect despite anything to the contrary in section 150 (5) of the *Liquor Act 2007*.
- 25 Incorporation of documents and modification of definitions** (cf DL Act, s 19 (2); Gen Act, s 11 (3); STM Act, s 71 (3)–(6))
- (1) The statutory rules:
 - (a) may apply, adopt or incorporate, whether wholly or in part or with or without modifications, any of the following (either as in force or effect at a particular time or from time to time):

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- (i) any publication of the National Transport Commission that has been approved (whether before or after the commencement of this section) by the Australian Transport Council,
 - (ii) any national standards under the *Motor Vehicle Standards Act 1989* of the Commonwealth,
 - (iii) any other publication (including any Act or statutory rule of another jurisdiction), and
 - (b) may apply to any provision of the statutory rules, whether wholly or in part or with or without modifications, the provisions of the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.
- (2) Subsection (1) (a) extends to documents approved by the Australian Transport Council that have been published in this jurisdiction by the Authority on behalf of the National Transport Commission.
- (3) If a statutory rule applies, adopts or incorporates by way of reference any publication (or provision of a publication) referred to in subsection (1) (a) of the National Transport Commission that has been approved by the Australian Transport Council, evidence of the publication or provision may be given in any proceedings:
- (a) by the production of a document purporting to be a copy of it and purporting to be published by or on behalf of the National Transport Commission, or
 - (b) by the production of a document purporting to be a copy of it and purporting to be printed by the government printer or by the authority of the Government of this jurisdiction or another jurisdiction.
- (4) For the purposes of the statutory rules, the statutory rules may define an expression (or apply, adopt, or incorporate a definition of an expression in a publication referred to in subsection (1) (a)) that is defined by this Act:
- (a) in the same (or in substantially the same) way as it is defined by this Act, or
 - (b) by reference to one or more classes of matter included in the expression as defined by this Act, or
 - (c) by reference to a combination of classes of matter included in the expression as defined by this Act and in any other expression defined by this Act (but not so as to exceed the power to make statutory rules in respect of those classes of matter), or

- (d) for the purposes of applying, adopting or incorporating a publication of the National Transport Commission that has been approved by the Australian Transport Council—in the same way as it is defined in the publication despite anything contained in this Act or any other road transport legislation.

26 Offences in the statutory rules and certificate evidence (cf DL Act, ss 19 (3) and 19A; Gen Act, ss 10 (4), 11A (3), 11B (3), 11C (3) and 28A (3); STM Act, s 71 (7)–(10); VR Act, s 14 (4))

- (1) Subject to subsection (2), the statutory rules may create offences (including by making provision for or with respect to defences for such offences and who bears the onus of proof in respect of such defences).
- (2) Offences created by the statutory rules may be made punishable by a penalty not exceeding 34 penalty units.
- (3) In addition to a penalty referred to in subsection (2), the statutory rules may provide for a person who is convicted of an offence against this Act or the statutory rules:
 - (a) to be automatically disqualified by virtue of the conviction from holding a driver licence for a period not exceeding 6 months, or
 - (b) to be disqualified by order of the court that convicts the person of the offence from holding a driver licence for such period as the court thinks fit (whether for a period that is shorter or longer than a period of automatic disqualification referred to in paragraph (a)).
- (4) The statutory rules may provide for a person who is prosecuted for an aggravated form of an offence against the statutory rules to be convicted by a court of a lesser offence if the court is not satisfied that the elements of the aggravated offence have been proven, but is satisfied that the elements of the lesser offence have been proven.
- (5) The statutory rules may provide for a document that is signed or purports to be signed by or on behalf of the Authority or other specified person in respect of a speed limit applying to a road that certifies any matter specified by the statutory rules concerning the speed limit (or the operation of any device by means of which the speed limit is imposed) to be admissible and prima facie evidence of that matter in proceedings before a court or tribunal.

Chapter 3 Driver licensing

Part 3.1 General functions of Authority in relation to driver licensing

- 27 Maintenance of NSW driver licence register and other functions** (cf DL Act, s 8)
- (1) The Authority is to maintain a register of driver licences (the *NSW driver licence register*) in accordance with this Chapter and the statutory rules.
 - (2) The Authority also has the following functions under this Chapter:
 - (a) to administer the driver licensing system established by this Chapter and the statutory rules,
 - (b) to maintain the NSW demerit points register in accordance with this Chapter and the statutory rules,
 - (c) to provide information about drivers in accordance with the statutory rules,
 - (d) to exercise such other functions concerning driver licensing as are conferred or imposed by or under this Chapter and the statutory rules.
- 28 Authority not to issue or renew licence in certain circumstances** (cf DL Act, s 9)
- (1) The Authority must not issue a driver licence to a person unless it is satisfied that the person is a resident of this jurisdiction and that:
 - (a) the person is eligible to be issued with, or to apply for, the driver licence, and
 - (b) if the person is the holder of an Australian driver licence or a licence to drive a motor vehicle in a foreign country, that licence has been surrendered,in accordance with the statutory rules.
 - (2) However, the Authority may issue a driver licence to a person without the person surrendering the person's licence to drive a motor vehicle in a foreign country in circumstances prescribed by the statutory rules.
 - (3) The Authority must not renew a driver licence of a person if it is satisfied that the person is no longer a resident of this jurisdiction.
 - (4) Subsections (1) and (3), to the extent that they require a person to be a resident of this jurisdiction, do not apply to a person who resides temporarily outside this jurisdiction.

- (5) This section does not limit the other circumstances in which the Authority may refuse to issue or renew a licence.

29 Mutual recognition (cf DL Act, s 11)

- (1) The Authority must, in accordance with the statutory rules, recognise:
- (a) driver licences issued by another jurisdiction, and
 - (b) licence conditions that apply to those licences, other than conditions that apply only in circumstances that are unique to that other jurisdiction or that are prescribed by the statutory rules.
- (2) The statutory rules may provide for the effect of the recognition of driver licences and licence conditions by the Authority.
- (3) If a person who holds a driver licence issued by another driver licensing authority:
- (a) commits an offence in this jurisdiction that is included in the national schedule of demerit points, or
 - (b) pays the amount specified in a penalty notice for such an offence, the Authority must, as soon as practicable, transmit all relevant information about the offence to the other driver licensing authority.
- (4) If a person who is not the holder of an Australian driver licence:
- (a) commits an offence in this jurisdiction that is included in the national schedule of demerit points, or
 - (b) pays the amount specified in a penalty notice for such an offence, the Authority must transmit the relevant information about the offence to the driver licensing authority of the jurisdiction in which the person ordinarily resides.
- (5) However, the Authority is not required to transmit any information until after:
- (a) if the person appeals against a conviction for the offence and the appeal is dismissed or discontinued—the dismissal or discontinuance of the appeal, or
 - (b) if the person does not appeal—the last time at which the person could have appealed, or
 - (c) if the person does not pay the penalty specified in a penalty notice issued to the person in respect of the offence and the person does not elect to have the matter dealt with by a court—the time for the person to have the matter so dealt with has elapsed.

- (6) If the Authority receives information about a person from another driver licensing authority under a provision of a law of the other jurisdiction that corresponds to this section, the Authority must take the action it would have taken if the offence had been committed in this jurisdiction.

30 Security of information in registers (cf DL Act, s 12)

- (1) The Authority must ensure that information contained in the NSW driver licence register or the NSW demerit points register that is of a personal nature or that has commercial sensitivity for the person about whom it is kept is not released except as provided by the statutory rules or under another law.
- (2) However, if the register includes any photograph to which Part 3.5 applies, Part 3.5 (rather than the statutory rules) applies to the release of that photograph.

Part 3.2 Demerit points system

Division 1 NSW demerit points register and offences

31 NSW demerit points register (cf DL Act, s 14)

- (1) The Authority is to maintain a register of demerit points (the *NSW demerit points register*) in accordance with this Chapter and the statutory rules.
- (2) The Authority is to record, in the NSW demerit points register, against a person the number of demerit points specified in the statutory rules if:
- (a) the person is convicted of an offence specified in the national schedule of demerit points or any other offence specified in the statutory rules, or recognised, under section 32, or
 - (b) the person pays the whole or any part of the penalty specified in a penalty notice issued to the person in respect of the offence, or
 - (c) the person has not paid the penalty specified in a penalty notice issued to the person in respect of the offence, the person has not elected to have the matter dealt with by a court and the time for the person to have the matter so dealt with has lapsed.
- (3) Demerit points incurred by a person for an offence for which demerit points may be incurred under this Chapter or the statutory rules are to be recorded in the NSW demerit points register in respect of the day on which the offence was committed.

- (4) To avoid doubt, the Authority is not to record demerit points against a person under this Division in respect of an offence if the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of the offence.
- (5) Without limiting any other provision of this section, the Authority may correct any mistake, error or omission in the NSW demerit points register, subject to any requirements of the statutory rules.
Note. If the holder of a driver licence issued by another driver licensing authority commits an offence in this jurisdiction that warrants demerit points, the Authority must transmit all relevant information about the offence to the other authority (see section 29 (3)).

32 Offences for which demerit points are incurred (cf DL Act, s 15)

- (1) The statutory rules may prescribe:
 - (a) the offences (relating to the driving or use of motor vehicles), and the number of demerit points incurred for each offence, that comprise the national schedule of demerit points, and
 - (b) additional offences (relating to the driving or use of motor vehicles) created under a law of this jurisdiction for which demerit points may be incurred and the number of demerit points incurred for each offence.
- (2) The Authority may, by notice published in the Gazette:
 - (a) recognise offences (relating to the driving or use of motor vehicles) created under a law of this jurisdiction or another jurisdiction that are not on the national schedule of demerit points as being offences for which the Authority will record demerit points against persons, and
 - (b) specify the number of demerit points incurred for each of those offences.
- (3) The Authority may, by notice published in the Gazette, revoke the recognition of an offence against subsection (2) or amend the number of demerit points specified for an offence. Any such revocation or amendment takes effect on the day the notice is published in the Gazette, or on such later day as may be specified in the notice.
- (4) A statutory rule or a notice under this section may specify different numbers of demerit points for the same offence in different circumstances (whether or not the offence is contained in the national schedule of demerit points).
- (5) An offence is taken to be recognised under this section on the day the notice is published in the Gazette or on such later day as may be specified in the notice.

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- (6) A revocation or amendment under subsection (3) does not affect any demerit points incurred before the revocation or amendment takes effect.

Division 2 Consequences for unrestricted licence holders who incur demerit points

33 Suspension of licence (cf DL Act, s 16 (2)–(6))

- (1) The Authority must give a notice of licence suspension to the holder of an unrestricted driver licence who incurs 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) within the 3-year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.
- (2) Despite subsection (1), the Authority is not required to take action under that subsection if it is of the opinion that:
- (a) it would be unreasonable to do so, having regard to the date when any relevant offence was committed, or
 - (b) it would be more appropriate for the person to be dealt with under section 34 (2) or 35.
- (3) The notice of licence suspension must specify the date on which the suspension is to take effect and must contain any other matters specified by the statutory rules. The date specified must not be earlier than 28 days after the notice is given.
- (4) The period of licence suspension under subsection (1) is the period applicable under the following table:

Licence suspension for demerit points

Number of demerit points incurred within previous 3 years	Period of licence suspension
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13 (or 14 in the case of a professional driver) to 15	3 months
16 to 19	4 months
20 or more	5 months

- (5) If a person who has been served with a notice of licence suspension does not make an election under section 36, all driver licences held by the person are suspended for the period applicable under this section on and from the date specified in the notice.

34 Consequences in relation to licence applications (cf DL Act, s 16AA)

- (1) Demerit points recorded against a person must be taken into account if the person subsequently obtains or applies for a driver licence within 3 years of the date of the offence for which the demerit points are incurred.
- (2) For the purposes of subsection (1), if a person applies for a driver licence (including for the renewal of a licence) having incurred 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) within a 3-year period ending on the day on which the applicant last committed an offence for which demerit points have been recorded against the applicant:
- (a) the Authority may refuse the person's application and take action under section 35, or
 - (b) the Authority may grant the licence and take action under section 33.

35 Licence ineligibility (cf DL Act, s 16A (1)–(5))

- (1) The Authority may give a notice of licence ineligibility to the applicant for an unrestricted driver licence who incurs 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) within the 3-year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.
- (2) However, the Authority may not give a person both a notice of licence ineligibility and a notice of licence suspension under section 33 in respect of the same 3-year period.
- (3) The notice of licence ineligibility must specify the date on which the ineligibility is to take effect (not being a date that is earlier than the date on which the notice is given) and must contain any other matters specified by the statutory rules. If the notice is delivered to the applicant personally, the specified date is taken to be the date on which it is so delivered unless the notice provides for a later date.

- (4) The period of licence ineligibility under subsection (1) is the period applicable under the following table:

Licence ineligibility for demerit points

Column 1	Column 2
Number of demerit points incurred within previous 3 years	Period of licence ineligibility
13 (or 14 in the case of a professional driver) to 15	3 months
16 to 19	4 months
20 or more	5 months

- (5) If a person who has been served with a notice of licence ineligibility does not make an election under section 36, the person is not entitled:
- (a) to be issued with a driver licence for the ineligibility period applicable under this section on and from the date specified in the notice, and
 - (b) to apply for a driver licence for that period.

36 Driver may elect to be of good behaviour as alternative (cf DL Act, ss 16 (8) and (9) and 16A (7) and (8))

- (1) A person who incurs at least 13 demerit points (or in the case of a professional driver 14 demerit points) within the 3-year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person may:
- (a) if the person has been served with a notice of licence suspension—notify the Authority that the person elects, as an alternative to undergoing the suspension, to be of good behaviour for a period of 12 months on and from the day on which the licence would otherwise be suspended, or
 - (b) if the person has been served with a notice of licence ineligibility—notify the Authority that the person elects, as an alternative to undergoing the ineligibility period, to be of good behaviour for a period of 12 months from:
 - (i) where the ineligibility period has not commenced—the day on which the licence ineligibility would otherwise have had effect, or
 - (ii) where the ineligibility period has commenced—the day on which the person makes the election.

- (2) A notification of an election by a person under subsection (1) must be:
 - (a) in the form approved by the Authority, and
 - (b) if the person has been served with a notice of licence suspension—made before the commencement of the period of suspension, and
 - (c) if the person has been served with a notice of licence ineligibility—made before or during the commencement of the period of licence ineligibility.
- (3) If a person makes an election under subsection (1) (b), the Authority is authorised after the election is made or while the 12 months' good behaviour period is in force to issue a driver licence to the person or renew any driver licence held by the person.
- (4) If a person who has made an election under this section incurs 2 or more demerit points during the 12 months' good behaviour period, the Authority must give the person one of the following notices:
 - (a) a notice suspending all driver licences held by the person, commencing on a day specified in the notice (being a day that is not earlier than 28 days after the notice is given), for twice the period of suspension or licence ineligibility that would have applied to the person if the person had not made the election,
 - (b) a notice specifying that the person is ineligible to hold a driver licence, commencing on a day specified in the notice (being a day that is not earlier than the day the notice is given), for twice the period of suspension or licence ineligibility that would have applied to the person if the person had not made the election.
- (5) If the Authority gives a person a notice under subsection (4) (a), all driver licences held by the person are suspended for the period specified in the notice commencing on and from the date specified in the notice.
- (6) If the Authority gives a person a notice under subsection (4) (b), the person is not entitled:
 - (a) to be issued with a driver licence for the period specified in the notice commencing on and from the date specified in the notice, and
 - (b) to apply for a driver licence for that period.

37 Deletion of demerit points (cf DL Act, ss 16 (7) and (10)–(12) and 16A (6) and (9)–(11))

- (1) All demerit points recorded in the NSW demerit points register against a person at the date of a notice of licence suspension or notice of licence ineligibility given to the person under this Division (and taken into account for the purposes of the notice) are taken to be deleted:

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- (a) if the person's driver licences have been suspended under this Division—on the commencement of the period of suspension, or
 - (b) if the person has become ineligible under this Division to be issued with, and to apply for, a driver licence—on the commencement of the period of licence ineligibility, or
 - (c) if the person has elected to be of good behaviour as an alternative to undergoing suspension or licence ineligibility—on the commencement of the period of good behaviour.
- (2) If the period of suspension specified in the notice of licence suspension is determined in accordance with section 36 (4), a reference in subsection (1) to the demerit points recorded in the NSW demerit points register against the person concerned at the date of the notice is a reference to the demerit points recorded at that date that have been taken into account in the notice.
- (3) Despite subsection (1), demerit points incurred by a person in any of the following circumstances are not taken to be deleted under this section:
- (a) demerit points incurred after the person is served with a notice of licence suspension but before the suspension begins,
 - (b) demerit points incurred after the person is served with a notice of licence ineligibility but before the licence ineligibility takes effect,
 - (c) if the person has elected to be of good behaviour as an alternative to undergoing suspension or licence ineligibility—demerit points incurred after the person is served with the notice of licence suspension or notice of licence ineligibility (as the case may be) and before the 12 months' period of good behaviour begins.
- (4) Demerit points that are taken not to be deleted in the circumstances referred to in subsection (3) are to be taken into account for the purposes of sections 33 (1) and 35 (1) from the end of the period of licence suspension, period of licence ineligibility or period of good behaviour (as the case may be).
- (5) Nothing in this section prevents the Authority from retaining records of deleted demerit points incurred by any person.

38 Suspension of licence—graffiti licence orders (cf DL Act, s 16AB)

- (1) If a person who is subject to a graffiti licence order made under section 13C (1) (b) of the *Graffiti Control Act 2008* incurs the same or more than the threshold number of demerit points (within the meaning of section 13E of that Act) applying to the person during the graffiti licence order period under the order, the Authority must give the person a notice suspending all driver licences held by the person, commencing

on a day specified in the notice, for a period that is equivalent to the graffiti licence order period.

Note. At the commencement of this section, section 13E (2) of the *Graffiti Control Act 2008* required a graffiti licence order to specify the threshold number of demerit points as 4 demerit points.

- (2) On the commencement of the period of suspension referred to in subsection (1), all demerit points recorded in the NSW demerit points register against the person during the graffiti licence order period at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (3) Nothing in subsection (2) affects any demerit points incurred by the person before the beginning of the graffiti licence order period and any such points are to be taken into account for the purposes of section 33 (1) or 35 (1) from the end of the suspension period.
- (4) Nothing in subsection (2) prevents the Authority from retaining records of deleted demerit points incurred by any person.

Division 3 Consequences for learner or provisional licence holders who incur demerit points

39 Consequences generally (cf DL Act, s 17A)

If the holder of a learner licence or a provisional licence incurs the threshold number of demerit points within the 3-year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person, the Authority may:

- (a) issue a notice of suspension or cancellation of licence under section 40, or
- (b) if the person subsequently applies for a driver licence:
 - (i) refuse the application and issue a notice of licence ineligibility under section 41, or
 - (ii) where the driver licence applied for is a learner or provisional licence—grant the licence and issue a notice of suspension or cancellation of licence under section 40.

Note. The expression ***threshold number of demerit points*** for the holder of a learner licence or the holder of a provisional licence is defined in section 4 (1).

40 Suspension or cancellation of licence (cf DL Act, s 17B)

- (1) The Authority may give a notice of licence suspension or cancellation to the holder of a learner licence or a provisional licence who incurs the threshold number of demerit points within the 3-year period ending on

the day on which the person last committed an offence for which demerit points have been recorded against the person.

- (2) A notice of licence suspension must specify the date on which the suspension is to take effect and any driver licence to which the notice applies, and must contain any other matters specified by the statutory rules. The date specified must not be earlier than 28 days after the notice is given.
- (3) If a person is served with a notice of licence suspension under this section, all driver licences held by the person in relation to which the threshold number of demerit points is the same or lower than the number of demerit points taken into account for the purposes of the notice, are suspended on and from the date, and for the period, specified in the notice.
- (4) On the commencement of a period of suspension, all demerit points recorded in the NSW demerit points register against the person at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (5) Nothing in subsection (4) prevents the Authority from retaining records of deleted demerit points incurred by any person.
- (6) The statutory rules may make provision for or with respect to the following matters:
 - (a) notices of cancellation to holders of learner licences or provisional licences who incur the threshold number of demerit points,
 - (b) the circumstances in which the Authority may issue a notice of cancellation to holders of learner licences or provisional licences who incur the threshold number of demerit points,
 - (c) prescribing the driver licences held by a person that may be cancelled as a consequence of incurring demerit points the subject of a notice of cancellation served on the person,
 - (d) the deletion of demerit points recorded in the NSW demerit points register against a person on cancellation of the person's licence.

41 Licence ineligibility (cf DL Act, s 17C)

- (1) The Authority may give a notice of licence ineligibility to the applicant for a learner licence or provisional licence who incurs the threshold number of demerit points within the 3-year period ending on the day on which the person last committed an offence for which demerit points have been recorded against the person.

- (2) However, the Authority may not give a person both a notice of licence ineligibility and a notice of licence suspension or cancellation under section 40 in respect of the same 3-year period.
- (3) The notice of licence ineligibility must specify the date on which the ineligibility is to take effect (not being a date that is earlier than the date on which the notice is given), the period of ineligibility and any licence to which the notice applies, and must contain any other matters specified by the statutory rules. If the notice is delivered to the applicant personally, the specified date is taken to be the date on which it is so delivered unless the notice provides for a later date.
- (4) Except as provided by subsection (5), a person who has been served with a notice of licence ineligibility under this section is not entitled to apply for or be issued with any driver licence on and from the date, and for the period, specified in the notice.
- (5) Subsection (4) does not prevent a person served with a notice of licence ineligibility under this section who holds a driver licence of a licence class different from that the subject of the application in relation to which the notice is given, from applying for or being issued with:
 - (a) a renewal of that licence, or
 - (b) a higher grade or class of that licence.
- (6) On the commencement of an ineligibility period, all demerit points recorded in the NSW demerit points register against the person at the date of the notice, and taken into account for the purpose of the notice, are taken to be deleted.
- (7) Nothing in subsection (6) prevents the Authority from retaining records of deleted demerit points incurred by any person.
- (8) In this section, a reference to a grade of driver licence is a reference to a learner licence, a provisional P1 licence, a provisional P2 licence or an unrestricted licence (ordered from lowest to highest).

Division 4 General matters relating to demerit points

42 Determining demerit thresholds where combined licences are held (cf DL Act, s 17D)

- (1) If a person holds 2 classes of driver licence and a different threshold number of demerit points applies to each of those licences:
 - (a) demerit points incurred on the licence to which the higher threshold applies may be counted only towards the threshold applying to that licence, and
 - (b) demerit points incurred on the licence to which the lower threshold applies may be counted towards either threshold.

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- (2) If a person holds 2 classes of driver licence and the same threshold number of demerit points applies to both of those licences, demerit points incurred on either licence may be counted towards the threshold.
 - (3) If a person makes an election in accordance with section 36 and holds 2 classes of driver licence, demerit points incurred on either licence may be counted towards the threshold number of demerit points referred to in section 36 (4).
 - (4) For the purposes of subsections (1) and (2), the threshold number of demerit points applying to a licence is:
 - (a) for an unrestricted licence—the threshold of 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) applying to the holder of an unrestricted licence under Division 2, and
 - (b) for a learner, provisional P1 or provisional P2 licence—the threshold number of demerit points applying to the holders of those licences as defined in section 4 (1).

43 Demerit points penalties (cf DL Act, s 18)

- (1) A period of licence suspension under Division 2 or 3 is in addition to any period of licence suspension imposed under another law of this jurisdiction.
- (2) Demerit points recorded in the NSW demerit points register against a person are not affected by a period of licence suspension or disqualification imposed by a court in Australia, or under another law in force in this jurisdiction.
- (3) Nothing in this section prevents the statutory rules from requiring the Authority to take into account any prior period of suspension ended by a disqualification when determining whether to issue a new driver licence to a person who has completed any such period of disqualification.
- (4) The Authority may decide to suspend or cancel a driver licence under this Part without the holder of the licence having been provided an opportunity to show cause why the licence should not be suspended or cancelled.

Part 3.3 Interlock devices

44 Definitions (cf DL Act, s 21)

In this Part:

approved interlock device—see section 45.

approved interlock installer—see section 46 (1).

approved interlock service provider—see section 46 (2).

interlock device means a device designed to:

- (a) analyse a breath sample for the presence of alcohol, and
- (b) prevent a motor vehicle from being started if it detects more than a certain concentration of alcohol.

interlock driver licence—see section 47 (2) (a).

maintenance, in relation to an interlock device, includes (but is not limited to) the following:

- (a) the retrieval of any information that is stored electronically by or with the device,
- (b) any work that improves or augments the functionality of the device.

45 Meaning of “approved interlock device” (cf DL Act, s 21A)

In this Part, an ***approved interlock device*** is an interlock device of a type approved by the Authority by order published in the Gazette.

Note. The Authority may amend, rescind, revoke or repeal an order made under this section. See section 43 of the *Interpretation Act 1987* and the definition of ***repeal*** in section 21 of that Act.

46 Meaning of “approved interlock installer” and “approved interlock service provider” (cf DL Act, s 21B)

- (1) In this Part, an ***approved interlock installer*** means a person approved in writing by the Authority as a person who may install and remove approved interlock devices in motor vehicles for the purposes of this Part.
- (2) In this Part, an ***approved interlock service provider*** means a person approved in writing by the Authority as a person who may carry out maintenance to ensure the proper operation of approved interlock devices, or conduct inspections of such devices, for the purposes of this Part.
- (3) A person may be both an approved interlock installer and approved interlock service provider for the purposes of this Part.
- (4) The Authority may revoke any approval given to a person under this section by written notice given to the person.
- (5) The Authority is not liable in civil proceedings (whether for negligence or otherwise) for anything done or omitted to be done by an approved interlock installer or approved interlock service provider in exercising (or purportedly exercising) any function under this Act or the statutory rules. In particular, the Authority is not vicariously liable for any such act or omission.

47 Statutory rules concerning installation, maintenance and use of interlock devices (cf DL Act, s 21C)

- (1) Without limiting Chapter 2, the statutory rules may make provision for or with respect to the installation, removal and maintenance of interlock devices on motor vehicles and the use of such devices (whether or not for the purposes of a disqualification suspension order within the meaning of section 208).
- (2) Without limiting subsection (1), the statutory rules may:
 - (a) provide for the issue of conditional licences (*interlock driver licences*) that restrict the holders of such licences to driving motor vehicles fitted with approved interlock devices by approved interlock installers, and
 - (b) require (or authorise the Authority to require) applicants for interlock driver licences to submit to medical consultations before such applicants can be issued with such licences or at any time during which such licences are in force, and
 - (c) prescribe additional conditions (or authorise the Authority to impose conditions) that holders of interlock driver licences must observe, including (but not limited to) the following:
 - (i) conditions relating to the maximum concentration of alcohol that may be present in the breath or blood of holders of such licences when they drive motor vehicles,
 - (ii) conditions relating to the installation, maintenance and removal of interlock devices (including the payment of costs relating to such installation, maintenance or removal),
 - (iii) conditions relating to the inspection of interlock devices (or motor vehicles fitted with such devices) and the provision of information relating to such inspections to the Authority,
 - (iv) conditions relating to the provision of any data or other information collected by an interlock device (including the payment of any costs relating to the provision of such data or other information),
 - (v) any other conditions relating to the use of interlock devices, and
 - (d) provide for certain motor vehicles (or classes of motor vehicles) not to be driven by holders of interlock driver licences, and
 - (e) provide for the Authority to inspect motor vehicles fitted with interlock devices (or require such motor vehicles to be inspected by other persons), and

- (f) specify procedures (or authorise the Authority to specify procedures) for approved interlock installers and approved interlock service providers to observe when installing, removing, inspecting or carrying out maintenance on approved interlock devices, and
- (g) provide for applications by persons to be approved by the Authority as approved interlock installers or approved interlock service providers and for fees payable in respect of such applications, and
- (h) authorise a police officer:
 - (i) to stop and inspect motor vehicles that the officer reasonably suspects may be fitted with an interlock device, and
 - (ii) to seize any such motor vehicles or devices where the device is fitted to a motor vehicle driven by the holder of an interlock driver licence and the officer reasonably suspects that the device has been used in contravention of this Act or the statutory rules, and
- (i) provide for offences relating to the following:
 - (i) the use of approved interlock devices, or the use of devices that are not approved interlock devices, by holders of interlock driver licences,
 - (ii) tampering or other interference with approved interlock devices fitted to motor vehicles driven (or to be driven) by holders of interlock driver licences, or with breath samples provided for such devices,
 - (iii) the installation, maintenance or removal of interlock devices that are used (or may be used) by holders of interlock driver licences,
 - (iv) the provision of data or information concerning interlock devices that are used (or may be used) by holders of interlock driver licences,
 - (v) any other acts or omissions that may assist the holder of an interlock driver licence in contravening any conditions of the licence or committing an offence against this Act or the statutory rules.

48 Financial assistance for use of approved interlock devices (cf DL Act, s 21D)

- (1) The Authority must establish a scheme under which persons seeking to gain the use of, or who are using, approved interlock devices may obtain financial assistance for the installation, removal or maintenance of such devices.

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- (2) The Authority may approve the provision of financial assistance under this section subject to any means tests and conditions as may be determined by the Authority from time to time.
 - (3) If it is a condition of the provision of any financial assistance provided under this section that all or part of it be repaid in specified circumstances, the amount of financial assistance that becomes repayable on the occurrence of those circumstances is a debt due to the Crown recoverable in a court of competent jurisdiction.
 - (4) For the purposes of subsection (3), a certificate issued by the Authority that certifies that it was a condition of the provision of financial assistance that all or part of it be repaid in specified circumstances is prima facie evidence that the assistance was provided on that condition.
 - (5) Payments of financial assistance are to be paid from the Roads and Maritime Services Fund established by section 77 of the *Transport Administration Act 1988*.

Part 3.4 Offences concerning driver licensing

Division 1 Unlawfully obtaining or using licences

49 Obtaining driver licence by false statements (cf DL Act, s 22)

- (1) A person must not:
 - (a) by a false statement or any misrepresentation or other dishonest means, obtain or attempt to obtain a driver licence or the renewal of a driver licence, or
 - (b) without lawful authority or excuse, possess a driver licence obtained or renewed using those means.

Maximum penalty: 20 penalty units.

- (2) A driver licence so obtained or renewed is void, and the Authority may alter the NSW driver licence register accordingly.
- (3) Subsection (1) does not apply to a driver licence receipt issued by another jurisdiction.

50 Unlawful possession of driver licence (cf DL Act, s 23 (1))

A person must not, without lawful authority or excuse, have in the person's possession:

- (a) an Australian driver licence, or
- (b) any article resembling an Australian driver licence and calculated to deceive.

Maximum penalty: 20 penalty units.

51 Unlawful alteration or use of licence (cf DL Act, s 23 (2)–(4))

- (1) A person must not alter a driver licence in a way that is calculated to deceive.
Maximum penalty: 20 penalty units.
- (2) A person must not produce a driver licence that has been altered in a manner that is calculated to deceive.
Maximum penalty: 20 penalty units.
- (3) A person must not:
 - (a) forge a driver licence, or
 - (b) fraudulently alter or use a driver licence, or
 - (c) fraudulently lend, or allow another person to use, a driver licence.Maximum penalty: 20 penalty units.

52 Seizure of driver licences (cf DL Act, s 24)

- (1) A police officer, or a person authorised in writing by the Authority (an *authorised person*), may, with no authority other than this section, seize an Australian driver licence or any article resembling an Australian driver licence if:
 - (a) the licence or article is produced to the police officer or authorised person by another person who represents it to be the person's driver licence, and
 - (b) the police officer or authorised person reasonably suspects that the licence or article:
 - (i) has been obtained in contravention of section 49 or a former corresponding provision, or
 - (ii) is unlawfully in the possession of the person who produced it.
- (2) A person who produces any licence or article as referred to in subsection (1) (a) must, at the request of the police officer or authorised person to whom it was produced (and on being supplied with adequate materials), provide a specimen of the person's signature.
Maximum penalty: 20 penalty units.
- (3) The grounds on which a reasonable suspicion, sufficient to authorise a seizure under this section, may be formed include (but are not limited to) any one or more of the following:
 - (a) a lack of resemblance between the person depicted in a photograph affixed to the Australian driver licence or article, purporting to be a photograph of the holder, and the person who produced the Australian driver licence or article,

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- (b) a lack of resemblance between a signature inscribed on the Australian driver licence or article, purporting to be the signature of the holder, and a specimen signature provided by the person who produced the Australian driver licence or article,
 - (c) a refusal by the person, after producing the Australian driver licence or article, to comply with a request under subsection (2).
- (4) An Australian driver licence or article seized under this section must be forwarded to the Authority. The Authority may:
- (a) return the Australian driver licence to the person who produced it, if it is satisfied that the driver licence was lawfully in the possession of the person who produced it, or
 - (b) in any other case, deal with it in such manner as it thinks fit.
- (5) The holder of a genuine and valid Australian driver licence seized under this section does not commit any offence merely because the holder is not in possession of the licence at any time after the seizure and before the licence is returned.

Division 2 Driving without appropriate licence

53 Driver must be licensed (cf DL Act, s 25 (1)–(4) and (6)–(8))

- (1) A person must not, unless exempted by the statutory rules:
- (a) drive a motor vehicle on any road without being licensed for that purpose, or
 - (b) employ or permit any person not so licensed to drive a motor vehicle on any road.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not apply to or in respect of a light rail vehicle.
- (3) A person who has never been licensed must not, unless exempted by the statutory rules, drive a motor vehicle on any road without being licensed for that purpose.

Maximum penalty: 20 penalty units (in the case of a first offence) or 30 penalty units or imprisonment for a period of 18 months or both (in the case of a second or subsequent offence).

- (4) If a person is convicted of an offence against subsection (3) (being a second or subsequent offence), the person is disqualified by the conviction (and without any specific order) for a period of 3 years from holding a driver licence. The disqualification is in addition to any penalty imposed for the offence.

Note. Section 207 provides for the effect of a disqualification (whether or not by order of a court).

- (5) For the purposes of subsection (3), a person has never been licensed in connection with an offence if the person has not held a driver licence (or equivalent) of any kind in Australia for the period of at least 5 years immediately before the commission of the offence.
- (6) A person who has never been licensed cannot be convicted under both this section and section 54 in respect of driving on the same occasion. However, nothing in this section prevents the person from being convicted of an offence against section 54 in respect of driving that constitutes an offence against this section.
- (7) A person cannot be convicted under both subsections (1) (a) and (3) in respect of driving on the same occasion. A person charged with an offence against subsection (3) can be convicted instead of an offence against subsection (1) (a), but a person charged with an offence against subsection (1) (a) cannot be convicted instead of an offence against subsection (3).

54 Offences by disqualified drivers or drivers whose licences are suspended or cancelled (cf DL Act, s 25A (1)–(10))

(1) **Driving or making licence application while disqualified**

A person who is disqualified from holding or obtaining a driver licence must not:

- (a) drive a motor vehicle on a road during the period of disqualification, or
- (b) make an application for a driver licence during the period of disqualification and in respect of the application:
 - (i) state the person's name falsely or incorrectly, or
 - (ii) omit to mention the disqualification.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (2) Subsection (1) does not apply to a driver of a motor vehicle in relation to a period of disqualification the commencement and completion dates of which have been altered by operation of section 206 unless the Authority has given written notice of the altered dates to the driver before the driver is alleged to have driven the vehicle.

Note. Section 276 (and statutory rules made for the purposes of that section) provide for the service and giving of documents to persons under the road transport legislation, which includes this Act.

(3) **Driving or making licence application while licence suspended (other than for non-payment of fine)**

A person whose driver licence is suspended (otherwise than under section 66 of the *Fines Act 1996*) must not:

- (a) drive on a road a motor vehicle of the class to which the suspended driver licence relates, or
- (b) make an application for a driver licence during the period of suspension for a motor vehicle of the class to which the suspended driver licence relates and in respect of such an application:
 - (i) state the person's name falsely or incorrectly, or
 - (ii) omit to mention the suspension.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(4) **Driving or making licence application after licence refusal or cancellation (other than for non-payment of fine)**

A person whose application for a driver licence is refused or whose driver licence is cancelled (otherwise than under section 66 of the *Fines Act 1996*) must not:

- (a) drive on a road a motor vehicle of the class to which the cancelled licence or the refused application related without having subsequently obtained a driver licence for a motor vehicle of that class, or
- (b) make an application for a driver licence for a motor vehicle of the class to which the cancelled licence or the refused application related and in respect of the application:
 - (i) state the person's name falsely or incorrectly, or
 - (ii) omit to mention the cancellation or refusal.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(5) **Driving or making licence application after licence cancelled or suspended for non-payment of fine**

A person whose driver licence is suspended or cancelled under section 66 of the *Fines Act 1996* must not:

- (a) in the case of a suspended driver licence:
 - (i) drive on a road a motor vehicle of the class to which the suspended licence relates, or

- (ii) make an application for a driver licence during the period of suspension for a motor vehicle of the class to which the suspended driver licence relates and in respect of such an application state the person's name falsely or incorrectly or omit to mention the suspension, or
- (b) in the case of a cancelled driver licence:
 - (i) drive on a road a motor vehicle of the class to which the cancelled licence related without having subsequently obtained a driver licence for a motor vehicle of that class, or
 - (ii) make an application for a driver licence for a motor vehicle of the class to which the cancelled licence related and in respect of the application state the person's name falsely or incorrectly or omit to mention the cancellation.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (6) In determining any penalty or period of disqualification to be imposed on a person for an offence against subsection (5), a court must take into account the effect the penalty or period of disqualification will have on the person's employment and the person's ability to pay the outstanding fine that caused the person's driver licence to be suspended or cancelled.

(7) **No need to state previous licence cancellation or refusal in certain cases**

For the purposes of subsection (4) (b) or (5) (b) (ii), a person who applies for a driver licence for a class of motor vehicle need not mention a previous cancellation of a driver licence (or refusal of an application for a driver licence) for that class of motor vehicle if the person has obtained a driver licence after any such cancellation or refusal by means of an application that stated the person's name correctly and mentioned the cancellation or refusal.

(8) **Automatic disqualifications apply for certain offences**

If a person is convicted by a court of an offence against subsection (1), (3), (4) (a) or (5), the person:

- (a) is disqualified by the conviction (and without any specific order) for the relevant disqualification period from the date of expiration of the existing disqualification or suspension or from the date of such conviction, whichever is the later, from holding a driver licence, and

- (b) may also be disqualified, for such additional period as the court may order, from holding a driver licence.

Note. Section 207 provides for the effect of a disqualification (whether or not by order of a court).

- (9) For the purposes of subsection (8), the *relevant disqualification period* is:

- (a) in the case of a first offence against subsection (1), (3) or (4) (a)—12 months, or
(b) in the case of a first offence against subsection (5)—3 months, or
(c) in the case of a second or subsequent offence—2 years.

- (10) The disqualification referred to in subsection (8) is in addition to any penalty imposed for the offence.

- (11) **Offences extend to disqualifications, suspensions and cancellations by court order or under law**

Subsections (1), (3) and (4) apply to a person who is disqualified from holding a licence, or whose licence is suspended or cancelled, by a court in Australia or under any law in this jurisdiction or another jurisdiction.

- (12) **Statutory rules may exclude driving of certain motor vehicles**

Subsections (1), (4) (a) and (5) (b) (i) do not apply to the driving of a motor vehicle in circumstances prescribed by the statutory rules.

Part 3.5 Protection of stored photographs

55 Photographs to which this Part applies (cf DL Act, s 39)

This Part applies to:

- (a) photographs taken or provided in relation to applications for the issue or renewal by the Authority of a driver licence, and
(b) photographs taken or provided for the purpose of applications for the issue or renewal by the Authority of a “proof of age” card, and
(c) photographs in the possession of the Authority that were taken or provided for the purpose of applications for the issue or renewal by the Commissioner of Police of the following:
(i) a licence or permit under the *Firearms Act 1996*,
(ii) a licence under the *Security Industry Act 1997*,
(iii) a permit under the *Weapons Prohibition Act 1998*, and
(d) photographs in the possession of the Authority that were taken or provided for the purpose of applications for the issue or renewal of an operator licence under the *Commercial Agents and Private Inquiry Agents Act 2004*, and

- (e) photographs in the possession of the Authority that were taken or provided for the purposes of applications for the issue of a licence under the *Tattoo Parlours Act 2012*.

56 Purposes for which photographs may be kept and used (cf DL Act, s 40)

- (1) A photograph to which this Part applies may be kept and used by the Authority only for one or more of the following purposes:
 - (a) to reproduce the likeness of a person on a driver licence or on the following:
 - (i) a licence or permit under the *Firearms Act 1996*,
 - (ii) a licence under the *Security Industry Act 1997*,
 - (iii) a permit under the *Weapons Prohibition Act 1998*,
 - (iv) an operator licence under the *Commercial Agents and Private Inquiry Agents Act 2004*,
 - (v) an authority under the *Passenger Transport Act 1990*,
 - (vi) a licence under the *Tattoo Parlours Act 2012*,
 - (b) to assist in determining the identity of any person in the course of determining whether or not to issue, replace or renew a driver licence,
 - (c) to assist in determining the identity of any person in the course of determining whether or not to register, or renew the registration of, a vehicle under this Act,
 - (d) in connection with the exercise of functions conferred or imposed on the Authority by or under the photo-access arrangements under Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002*,
 - (e) in connection with an investigation relating to or leading to criminal proceedings against a person under a provision of this Chapter,
 - (f) in connection with an investigation relating to or leading to criminal proceedings against a person under section 69 (for obtaining registration or unregistered vehicle permits by a false statement or any misrepresentation or other dishonest means),
 - (g) for the conduct of criminal proceedings against a person under a provision of this Chapter or section 69,
 - (h) any purpose for which a photograph to which Part 4 (Security arrangements for photographs) of the *Photo Card Act 2005* applies may be kept and used by the Authority under that Part,
 - (i) any purpose for which a photograph to which Division 3 (Security and protection of photographs) of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002*

applies may be kept and used by the Authority under that Division,

- (j) for any other purpose prescribed by the statutory rules.
- (2) A photograph may be used for a purpose set out in this section at the time that the photograph is provided or taken or at any later time.

57 Release of photographs prohibited (cf DL Act, s 41)

- (1) The Authority must ensure that a photograph to which this Part applies, and any photographic image or other matter contained in any database of such photographs, is not released except:
 - (a) to the NSW Police Force, or
 - (b) to Transport for NSW for the purpose of enabling Transport for NSW to exercise its functions under the *Passenger Transport Act 1990*, or
 - (c) to a driver licensing authority of another jurisdiction, or
 - (d) for the purpose of the conduct of any criminal proceedings:
 - (i) under this Act or under any provision of any other road transport legislation, or
 - (ii) in relation to an operator licence under the *Commercial Agents and Private Inquiry Agents Act 2004*, or
 - (iii) in relation to a licence or permit under the *Firearms Act 1996*, a licence under the *Security Industry Act 1997* or a permit under the *Weapons Prohibition Act 1998*, or
 - (iv) in relation to a licence under the *Tattoo Parlours Act 2012*, or
 - (e) to the Sheriff, for the purpose of any fine recovery proceedings, or
 - (f) in the exercise of any function conferred or imposed on the Authority by or under the photo-access arrangements under Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002*, or
 - (g) as provided under any other law, or
 - (h) to the person whose likeness is shown in the photograph or on the database, or
 - (i) as authorised or required under Part 4 (Security arrangements for photographs) of the *Photo Card Act 2005* in respect of the release of photographs to which that Part applies, or

- (j) as authorised or required under Division 3 (Security and protection of photographs) of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002* in respect of the release of photographs to which that Division applies, or
 - (k) in accordance with the statutory rules.
- (2) Any release authorised by subsection (1) (a)–(e), or authorised by statutory rules made for the purposes of subsection (1) (k), must be in accordance with any protocol approved by the Privacy Commissioner.
- (3) Despite this section, photographs to which this Part applies, and any photographic image or other matter contained in any database of such photographs, must be provided to the Commissioner of Police on request if the request relates to the administration of the *Security Industry Act 1997*.

Part 3.6 Other provisions relating to driver licensing

58 Additional matters relating to identity (cf DL Act, s 32)

- (1) The Authority may refuse to issue or renew a driver licence:
- (a) if the applicant has not attended at a motor registry or another place nominated in or under the statutory rules and there submitted to the taking, by a person approved by the Authority, of a photograph of the applicant that is suitable for use on the driver licence, or
 - (b) if it is, in the opinion of the Authority, impracticable for the applicant to so attend and the applicant has not provided the Authority with a photograph of the applicant considered by the Authority as suitable for use on the driver licence, or
 - (c) if the applicant has not provided, in support of the application, such evidence as is required by the statutory rules or the Authority to establish the identity and home address of the applicant.
- (2) A person employed or engaged in connection with any aspect of the production of driver licences that feature a photograph of the holder, or otherwise concerned in the administration of this Act or the statutory rules, must not, otherwise than in the administration of this Act or the statutory rules:
- (a) reproduce, by photographic or other means, the likeness of a person that is depicted, or is to be depicted, on a licence, or
 - (b) cause or permit another person to do so.

Maximum penalty (subsection (2)): 20 penalty units.

59 Cancellation or suspension of driver licence for certain speeding offences (cf DL Act, s 33)

- (1) A driver licence may be cancelled or suspended by the Authority because of an alleged speeding offence, if, in respect of the alleged offence:
 - (a) the holder pays the whole or any part of the penalty specified in a penalty notice issued to the holder in respect of the offence, or
 - (b) the holder has not paid the penalty specified in the penalty notice issued to the holder in respect of the offence and has not elected to have the matter dealt with by a court, and the time for the holder to have the matter so dealt with has lapsed.
- (2) The Authority may decide to cancel or suspend a driver licence under this section without the holder having been provided an opportunity to show cause why the licence should not be cancelled or suspended.
- (3) If a person's driver licence is cancelled by the Authority under this section, the Authority may refuse to issue the person with any further licence for a period determined by the Authority and specified in a notice served on the person by the Authority.
- (4) If a person's driver licence is suspended by the Authority under this section, the person's licence is suspended for such period as may be determined by the Authority and specified in a notice served on the person by the Authority.
- (5) Nothing in this section limits any discretion of the Authority to decline to issue a driver licence to a person.
- (6) In this section:
speeding offence means an offence that involves exceeding a speed limit fixed by or under this Act and that is prescribed by the statutory rules for the purposes of this section.

60 Effect of expiry of driver licence during a suspension period (cf DL Act, s 33A)

If the driver licence of a person expires during a period of suspension for the licence imposed under this Act:

- (a) the person cannot apply to the Authority for another driver licence during the unexpired portion of the suspension period, and
- (b) the person's driver licence is taken to be suspended during the unexpired portion of the suspension period for the purposes of any offence provision under this Act or any other law in relation to driving a vehicle while a person's driver licence is suspended.

61 Evidence that person is professional driver (cf DL Act, s 18A)

- (1) The Authority may, for the purpose of determining whether a person is a professional driver, request the person to provide the Authority with information (including in the form of a statutory declaration) as to the primary work of the person.
- (2) The Authority is entitled to treat a person who has been requested to provide that information as not being a professional driver unless any such requested information is provided to the Authority in accordance with the request.
- (3) A request for information under this section may be made in connection with an application by the person for the issue or renewal of a driver licence or by written notice to the person.

Chapter 4 Vehicle registration

Part 4.1 Registration system for vehicles

Division 1 Functions and powers of Authority

62 Functions of Authority (cf VR Act, s 7 (1))

The Authority has the following functions under this Chapter:

- (a) to administer the registration system for registrable vehicles established by the statutory rules,
- (b) to maintain a NSW registrable vehicles register in accordance with this Chapter,
- (c) to collect registration and permit charges determined or imposed under Schedule 2 or this Chapter and taxes determined under the *Motor Vehicles Taxation Act 1988*,
- (d) to provide information about registrable vehicles and registered operators in accordance with the statutory rules,
- (e) to administer the system for regulating vehicle standards and inspections established by the statutory rules.

63 Powers of Authority (cf VR Act, s 8)

For the purpose of carrying out its functions under this Chapter, the Authority may, in accordance with the statutory rules:

- (a) register or refuse to register a registrable vehicle, and
- (b) renew or refuse to renew the registration of a registrable vehicle, and
- (c) transfer or refuse to transfer the registration of a registrable vehicle from one person to another, and
- (d) issue a permit or refuse to issue a permit for the use of an unregistered registrable vehicle, and
- (e) impose conditions on the registration of a registrable vehicle or on a permit to use an unregistered registrable vehicle, and
- (f) cancel or suspend the registration of a registrable vehicle, and
- (g) collect registration and permit charges determined or imposed under Schedule 2 or this Chapter and taxes imposed by the *Motor Vehicles Taxation Act 1988*, and
- (h) specify a GCM for a motor vehicle in the circumstances envisaged in paragraph (b) of the definition of **GCM** in section 4 (1), and

- (i) specify a GVM for a motor vehicle or trailer in the circumstances envisaged in paragraph (b) of the definition of **GVM** in section 4 (1), and
- (j) require proof of compliance with any applicable provisions of the *Motor Accidents Compensation Act 1999* and the *Duties Act 1997*, and
- (k) exercise other powers conferred by the statutory rules in relation to vehicle registration.

Division 2 NSW registrable vehicles register

64 Maintenance of NSW registrable vehicles register (cf VR Act, s 10)

(1) **Register to be maintained in accordance with statutory rules**

Subject to this section, the Authority is to maintain a register of registrable vehicles (the *NSW registrable vehicles register*) in accordance with the statutory rules.

(2) **Register does not provide evidence of title**

The NSW registrable vehicles register does not provide evidence of title to any registrable vehicle.

(3) **Security of information in register**

The Authority must ensure that the information in the NSW registrable vehicles register that is of a personal nature or that has commercial sensitivity for the person about whom it is kept is not released except as provided by the statutory rules or under another law.

(4) **Recording of names of registered operators**

The Authority may:

- (a) in the case of a transitional registrable vehicle—continue to record in the NSW registrable vehicles register the names of not more than 2 persons as being responsible for the vehicle, or
- (b) in the case of any other registrable vehicle—the name of only one person as being responsible for the vehicle.

(5) A registrable vehicle is a ***transitional registrable vehicle*** if:

- (a) 2 persons were recorded as being responsible for the vehicle in the Register (within the meaning of the *Road Transport (Vehicle Registration) Act 1997*) immediately before the commencement of this section, and
- (b) the vehicle has not ceased to be a transitional registrable vehicle since that time.

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- (6) A registrable vehicle *ceases to be a transitional registrable vehicle* on the occurrence of any of the following:
- (a) the transfer of the registration of the vehicle,
 - (b) the cancellation or surrender of the registration of the vehicle,
 - (c) if the registration of the vehicle has expired and the period within which the registration may be renewed has also expired.
- (7) If more than one person is recorded as a registered operator of a transitional registrable vehicle, a reference in any relevant legislation to the registered operator of a registrable vehicle within the meaning of this Act is taken (subject to any statutory rules made for the purposes of subsection (8)) to include a reference to each registered operator of such a transitional registrable vehicle.
- (8) The statutory rules may provide for the determination of the respective rights, liabilities and obligations of each registered operator of a transitional registrable vehicle under any relevant legislation.
- (9) **Other information that may be included in register**
The NSW registrable vehicles register may include information notified to the Authority under this Act and such other information as the Authority considers appropriate.
- (10) **Correction of register**
Without limiting section 62 or any other provision of this section, the Authority may correct any mistake, error or omission in the NSW registrable vehicles register subject to the requirements (if any) of the statutory rules.
- (11) **Definition**
In this section:
relevant legislation means:
- (a) a provision of this Act (or a provision of a statutory rule made under this Act), or
 - (b) a provision of any other Act (or a provision of a statutory rule made under any other Act) concerned with the registered operator of a registrable vehicle within the meaning of this Act.

65 Authority not to register registrable vehicles based outside this jurisdiction (cf VR Act, s 9)

The Authority must not register a registrable vehicle unless it is satisfied that the vehicle's garage address is in this jurisdiction.

Division 3 Devices, plates and documents

66 Special number-plates (cf VR Act, s 8A)

- (1) The statutory rules may make provision for or with respect to the issue by the Authority of number-plates (*special number-plates*) that have a special design, format or content approved by the Authority, and for or with respect to the use, transfer, replacement and surrender of special number-plates.
- (2) The Authority is authorised to enter into contractual and other commercial arrangements (*special number-plate arrangements*) for the provision of marketing and other services to the Authority in connection with the issue of special number-plates.
- (3) Special number-plate arrangements under this section must include provision to ensure that a party to the arrangements will be subject to the same restrictions on the collection, use or disclosure of information obtained in the course of the operation of the arrangements as apply to the Authority under the *Privacy and Personal Information Protection Act 1998*.
- (4) Statutory rules made for the purposes of this section may include provision for or with respect to the following:
 - (a) the issue of special number-plates independently of vehicle registration, as a commercial undertaking conducted by the Authority,
 - (b) providing for the Authority to enter into agreements with persons to whom special number-plates are or are to be issued, to provide for their rights and obligations in connection with the special number-plates issued to them,
 - (c) requiring the payment of fees, charges and consideration for or in connection with the issue, use, transfer, replacement and surrender of special number-plates,
 - (d) providing for the setting of those fees, charges and consideration by the statutory rules, the Authority or a party to special number-plate arrangements or by or under any process provided for by the statutory rules or special number-plate arrangements.
- (5) The *issue* of a number-plate extends to arrangements for allocating, setting aside or reserving a number-plate (whether or not involving the delivery of possession of the number-plate and including arrangements under which the Authority retains possession of a number-plate after its issue).

67 Ownership of devices, plates or documents (cf VR Act, s 13)

- (1) Any devices, plates or documents issued by the Authority for the purpose of authorising the use of a registrable vehicle remain the property of the Authority.
- (2) Without limiting subsection (1), any special number-plate issued by the Authority (whether or not for the purpose of authorising the use of a registrable vehicle) remains the property of the Authority.

Part 4.2 Offences concerning vehicle registration

Division 1 General offences

68 Prohibition on using unregistered registrable vehicles (cf VR Act, s 18)

- (1) A person must not use an unregistered registrable vehicle on a road.
Maximum penalty: 20 penalty units.
- (2) Subsection (1) does not apply to the use of a registrable vehicle on a road if:
 - (a) the vehicle belongs to a class of vehicle prescribed by the statutory rules referred to in section 21 as a vehicle to which this Act or Chapter does not apply, or
 - (b) the use is otherwise permitted by this Act or under the statutory rules.
- (3) Subsection (1) does not apply to a registrable vehicle that was left standing on a road:
 - (a) within the period of 15 days after the date on which that vehicle ceased to be registered or to be exempted from being registered, or
 - (b) with the consent of the responsible person for the road.
- (4) If the Authority cancels the registration of a vehicle under section 84, subsection (1) does not apply in relation to the vehicle until the day on which the registered operator of the vehicle is given notice by the Authority of the cancellation.
- (5) In this section:
registrable vehicle includes:
 - (a) an incomplete or partially constructed vehicle, and
 - (b) the remains of a vehicle.

responsible person for a road on which a vehicle was left standing means:

- (a) if the care, control and management of the road was then vested in a person other than the owner of the road—the person in whom the care, control and management of the road was vested, or
- (b) in any other case—the owner of the road.

69 Obtaining registration or unregistered vehicle permits by false statements (cf VR Act, s 19)

- (1) A person must not:
 - (a) by a false statement or any misrepresentation or other dishonest means, attempt to register a registrable vehicle, or renew the registration of a registrable vehicle, under this Act, or
 - (b) without lawful authority or excuse possess a device, plate or document obtained using those means.

Maximum penalty: 20 penalty units.

- (2) A person must not:
 - (a) attempt to obtain an unregistered vehicle permit for a registrable vehicle, or renew the permit, under this Act by a false statement or any misrepresentation or other dishonest means, or
 - (b) possess a device, plate or document obtained using those means without lawful authority or excuse.

Maximum penalty: 20 penalty units.

- (3) A device, plate or document so obtained is void, and the Authority may alter the NSW registrable vehicles register accordingly.

70 Obligations of registered operators (cf VR Act, s 21)

- (1) This Act and the statutory rules do not affect the obligations of a registered operator of a registrable vehicle to comply with any applicable provisions of the *Motor Accidents Compensation Act 1999* and the *Duties Act 1997*.
- (2) A registered operator of a registrable vehicle must, in accordance with the statutory rules:
 - (a) ensure that any devices, plates and documents issued by the Authority are installed or displayed on the vehicle, and
 - (b) while operating the vehicle, carry or cause the driver to carry, documents prescribed by the statutory rules, and
 - (c) when required to do so by the Authority, produce documents prescribed by the statutory rules, and

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- (d) comply with any directions given by, and conditions imposed by, the Authority about the registration of the vehicle, and
 - (e) keep records required to be kept by the statutory rules about the registration of the vehicle.

Maximum penalty: 20 penalty units.

- (3) Without limiting section 181, a person is not liable to be convicted of an offence against subsection (2) and an offence against the statutory rules arising out of a single incident.

71 Offences relating to identification numbers of engines and other vehicle parts (cf VR Act, s 21A)

A person must not:

- (a) if the person is not the manufacturer—stamp or affix or cause or permit any person to stamp or affix any identification number on or to the engine, engine block or any other part prescribed by the statutory rules of a motor vehicle or trailer without the written authority of the Authority and except as prescribed by the statutory rules, or
- (b) except as required or permitted by or under this Act—alter, deface, remove or obliterate any identification number stamped on or otherwise affixed to the engine, engine block or any other part prescribed by the statutory rules of a motor vehicle or trailer, or
- (c) without lawful authority or excuse, have in the person's possession any engine, engine block, or other part of a motor vehicle or trailer prescribed by the statutory rules, knowing that the identification number stamped on or otherwise affixed to it has been altered, defaced, removed or obliterated otherwise than as required or permitted by or under this Act.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

Division 2 Offences involving interstate number-plates and vehicles

72 Definitions (cf VR Act, ss 22 (1) and 22A (1))

In this Division:

interstate number-plate means a number-plate issued under any law in force in another jurisdiction that is a State or Territory.

interstate registered vehicle means a registrable vehicle that is registered in another jurisdiction that is a State or Territory.

licensed motor dealer means the holder of a dealer's licence within the meaning of the *Motor Dealers Act 1974*.

73 Affixing of interstate number-plates on registrable vehicles in this jurisdiction (cf VR Act, s 22 (2)–(5))

- (1) A licensed motor dealer must not, without the approval of the Authority, cause, permit or allow an interstate number-plate to be affixed to a registrable vehicle in this jurisdiction.
Maximum penalty: 100 penalty units.
- (2) A licensed motor dealer is not guilty of an offence against subsection (1) if the dealer proves to the court's satisfaction that:
 - (a) the dealer had a reasonable excuse for contravening that subsection, and
 - (b) the contravention was not intended to avoid the requirements relating to the registration of registrable vehicles under this Act.
- (3) If a licensed motor dealer causes, permits or allows an interstate number-plate to be affixed to a registrable vehicle in this jurisdiction, the dealer must:
 - (a) cause a record to be made in accordance with subsection (4), and
 - (b) keep the record for a period of at least 5 years, and
 - (c) produce the record to the Authority or a police officer if requested to do so.Maximum penalty: 100 penalty units.
- (4) A record under subsection (3) must:
 - (a) identify the interstate number-plate and the registrable vehicle to which it was affixed, and
 - (b) identify the date on which, and the place where, the interstate number-plate was affixed, and
 - (c) be in the form approved by the Authority.

74 Operating interstate registered vehicles in this jurisdiction (cf VR Act, s 22A (2)–(4))

- (1) A corporation must not cause, permit or allow an interstate registered vehicle owned by the corporation to be used on a road in this jurisdiction.
Maximum penalty: 100 penalty units.

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- (2) A corporation is not guilty of an offence against subsection (1) if the corporation proves to the court's satisfaction:
- (a) that the interstate registered vehicle had, at the date of the offence, been owned by the corporation for less than 90 days, or
 - (b) that, during the period of 90 days immediately before the date of the offence, the interstate registered vehicle was outside this jurisdiction for a continuous period of at least 48 hours, or
 - (c) if the corporation:
 - (i) conducts a business that includes the leasing or hiring out of registrable vehicles, and
 - (ii) is unable to satisfy the court that paragraph (b) applies in relation to the interstate registered vehicle,that the vehicle was leased or hired out to the same person for the whole of the period of 90 days immediately before the date of the offence.
- (3) A reference in this section to an interstate registered vehicle owned by a corporation includes a reference to an interstate registered vehicle that is under the control or management of the corporation.

75 Direction to provide documents concerning use of interstate registered vehicles (cf VR Act, s 22B)

- (1) If the Authority or a police officer is of the opinion that an interstate registered vehicle is being used for any business or commercial purposes in this jurisdiction, the Authority or officer may, for the purposes of ascertaining whether section 74 (1) has been or is being contravened, direct a person to provide the Authority or officer with such documents relating to the use of the vehicle as are in the control or possession of the person.
- (2) A person must not fail to comply with a direction under subsection (1).
Maximum penalty: 100 penalty units (in the case of a corporation) or 20 penalty units (in any other case).
- (3) A direction under subsection (1):
- (a) must be in writing, and
 - (b) must specify the time and manner for complying with the direction, and
 - (c) may relate to a particular class of documents that are in the control or possession of the person to whom the direction is given.

Part 4.3 Defective vehicles

76 Defective registrable vehicles (cf VR Act, s 26)

- (1) A police officer, or the Authority, may inspect a registrable vehicle (whether or not on a road) for the purpose of deciding its identity, condition or the status (whether in this jurisdiction or another jurisdiction) of any registration or permit relating to the vehicle.
- (2) A registered operator or owner of, or any person in charge of or having the custody of or selling or having in possession for sale or otherwise of the registrable vehicle must afford the police officer or the Authority all reasonable facilities for making such an inspection.
Maximum penalty: 20 penalty units.
- (3) Without limiting subsection (1), for the purposes mentioned in that subsection and in connection with any inspection, a police officer or the Authority may:
 - (a) enter in or on the vehicle on a road, or
 - (b) enter in or on any premises ordinarily used for the sale of registrable vehicles and in or on such a vehicle on those premises, or
 - (c) enter in or on any other premises if the officer or the Authority has reasonable cause to believe a registrable vehicle is for sale, held in possession for sale or in a damaged condition as a result of an accident, and may enter in or on any such vehicle on those premises.
- (4) A police officer, or the Authority, may, in accordance with the statutory rules, on discovering a defective registrable vehicle:
 - (a) issue a warning or a defect notice, or
 - (b) impose conditions on the use of the vehicle, or
 - (c) prohibit the use of the vehicle.
- (5) A defect notice may be withdrawn or cleared in accordance with the statutory rules.
- (6) After inspecting a registrable vehicle, a police officer, or the Authority, may seize any device, plate or document in or on the vehicle if it is suspected on reasonable grounds that the device, plate or document is being used in committing an offence against this Act or the statutory rules.
- (7) In this section:
inspect, in relation to a registrable vehicle, includes observe the vehicle's performance, with or without the use of instrumentation.

77 Using registrable vehicles contrary to conditions or prohibitions under section 76 (cf VR Act, s 20)

A person must not use a registrable vehicle contrary to conditions or a prohibition imposed under section 76.

Maximum penalty: 20 penalty units.

78 Use of dangerously defective motor vehicles (cf VR Act, s 27B)

- (1) A person must not:
- (a) use a heavy motor vehicle that is dangerously defective on a road, or
 - (b) cause or permit a heavy motor vehicle that is dangerously defective to be used on a road.
- Maximum penalty: 20 penalty units.
- (2) Subsection (1) does not apply to or in respect of:
- (a) the use of a dangerously defective heavy motor vehicle if the motor vehicle is at, or in the vicinity of, the scene of an accident and its condition is the result of damage caused by the accident, or
 - (b) the use by a person of a dangerously defective heavy motor vehicle if the person is aware of the condition of the motor vehicle and has taken, or is taking, all such action as is reasonable in the circumstances to have the motor vehicle repaired or removed from a road, or
 - (c) the use by a person of a dangerously defective heavy motor vehicle that is being inspected or tested under subsection (3), or
 - (d) the use of a dangerously defective heavy motor vehicle in any other circumstances prescribed by the statutory rules.
- (3) For the purpose of ascertaining whether a heavy motor vehicle that is being used on a road is dangerously defective, any police officer or the Authority may cause the motor vehicle to be inspected and tested.
- (4) Without limiting any other function, any police officer or the Authority may, for the purposes of this section, do any one or more of the following:
- (a) request or signal the driver of a heavy motor vehicle to stop the motor vehicle,
 - (b) request the driver of a heavy motor vehicle:
 - (i) to produce for inspection the driver licence to drive the motor vehicle, and
 - (ii) to state the driver's name and address,

- (c) request the driver of a heavy motor vehicle to furnish the officer or the Authority with such information as the officer or the Authority may reasonably require,
 - (d) request the driver of a heavy motor vehicle to do such other things as the officer or the Authority may reasonably require for the purpose of facilitating the inspection and testing of the motor vehicle.
- (5) If a heavy motor vehicle has been stopped in compliance with a request or signal made or given under subsection (4) (a), any inspection or testing of the motor vehicle under subsection (3) is to be carried out:
- (a) at, or as near as practicable to, the place where the request or signal was so made or given, and
 - (b) as soon as practicable, and in any case within one hour, after the motor vehicle was so stopped.
- (6) A person must not:
- (a) hinder or obstruct a police officer or the Authority in the exercise of the officer's or Authority's functions under this section, or
 - (b) fail to comply with any request or signal made or given by a police officer or the Authority under this section.
- Maximum penalty: 20 penalty units.
- (7) For the purposes of this section, a heavy motor vehicle is ***dangerously defective*** if it is in such a condition that if a person drives or attempts to drive the motor vehicle it is likely that the person will lose control of the motor vehicle.
- (8) In this section:
heavy motor vehicle means a motor vehicle that has a GVM of more than 12 tonnes.

Part 4.4 Powers in relation to registrable vehicles

79 Power to seize unregistered vehicles (cf VR Act, s 27)

- (1) A police officer may seize any unregistered registrable vehicle (other than a registrable vehicle exempted from registration under this Act) that is being used on a road.
- (2) If any such registrable vehicle has been seized, the Local Court may, on the application of a police officer, make an order declaring the vehicle to be forfeited to the Crown.

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- (3) If such an application is made, the following provisions have effect:
- (a) notice of the application is to be given to the person who had the custody of the vehicle at the time of the seizure if the person can be found and to such other persons (if any) as the Local Court may direct,
 - (b) no order of forfeiture may be made if the owner of the vehicle satisfies the Local Court that there has been no intent to evade registration of the vehicle.
- (4) A responsible person for a vehicle who is aggrieved by an order of the Local Court made under this section in relation to the vehicle may appeal against the order to the District Court under Part 3 of the *Crimes (Appeal and Review) Act 2001* as if that order were a sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (5) The Authority may waive the forfeiture of a vehicle on payment within such period as the Authority may allow of a fine equivalent to the sum obtained by adding together:
- (a) the fee for the registration or renewal of the registration of the vehicle for each applicable registration period in any part of which the vehicle was used while unregistered, and
 - (b) the motor vehicle tax imposed under the *Motor Vehicles Taxation Act 1988* or the registration charges or administration fees imposed under Schedule 2 which would be due on the application for that registration or renewal,
- together with a further fine of 20 percent of that sum.
- (6) If any such fine is not paid within the period so allowed, the Authority may dispose of the vehicle in the manner prescribed by the statutory rules.
- (7) If a vehicle is sold under subsection (6), the Authority is to apply the proceeds of the sale as prescribed by the statutory rules.

80 Power of entry to inspect damaged vehicles (cf VR Act, s 27A)

- (1) The Authority may, at any time:
- (a) enter any premises on which the business of carrying out repairs to registrable vehicles damaged as a result of accidents is ordinarily carried on, and
 - (b) inspect any registrable vehicle or part of a registrable vehicle that is found by the Authority in or on those premises for the purpose of ascertaining whether or not the vehicle complies with the vehicle standards that apply to it.

- (2) A person must not wilfully delay or obstruct the Authority in the exercise of the Authority's powers under this section.

Maximum penalty: 20 penalty units.

81 Seizure of number-plate (cf VR Act, s 27C)

A police officer or person authorised by the Authority may seize any number-plate:

- (a) that is attached to:
- (i) a registrable vehicle the registration of which has expired not less than 15 days before the date on which the number-plate is seized, or
 - (ii) a registrable vehicle the registration of which has been cancelled, or
- (b) that has been used in contravention of a provision of the statutory rules that is prescribed by the statutory rules.

Part 4.5 Written-off vehicles

Division 1 Preliminary

82 Definitions (cf VR Act, s 16A)

In this Part:

Austroads means Austroads Limited (ACN 136 812 390), and includes any successor to or continuation of that company.

authorisation to repair means an authorisation to repair a written-off vehicle issued by the Authority under this Part.

auto-dismantler has the same meaning as in the *Motor Dealers Act 1974*, and includes any other person declared to be an auto-dismantler by the statutory rules under this Act.

certificate of compliance means a certificate of compliance issued by a licensed repairer under this Part.

dealer has the same meaning as in the *Motor Dealers Act 1974*, and includes any other person declared to be a dealer by the statutory rules under this Act.

former written-off vehicle has the meaning given by section 83 (1).

insurer means a person who carries on the business of insuring vehicles, and includes any other person declared to be an insurer by the statutory rules.

licensed repairer means a person who holds a licence under the *Motor Vehicle Repairs Act 1980*.

non-repairable damage means damage of a class, or damage caused in circumstances, prescribed by the statutory rules.

notifiable vehicle—see section 88.

self-insurer means any person who, in the course of a business, is the registered operator for 5 or more notifiable vehicles (or any other number of notifiable vehicles that may be prescribed by the statutory rules) in respect of each of which there is no insurance policy with an insurer covering loss or damage.

statutory written-off vehicle has the meaning given by section 83 (1).

total loss—see section 89.

vehicle identifier, in relation to a vehicle, means:

- (a) in the case of a vehicle manufactured before 1 January 1989—the number quoted on the compliance plate that uniquely identifies the vehicle and sets it apart from similar vehicles and that corresponds to the identification number of the vehicle that is permanently recorded elsewhere on the vehicle, or
- (b) in any other case—the unique vehicle identification number (or “VIN”) allocated to the vehicle in accordance with the International Standards Organisation’s vehicle identification system required under an Australian Design Rule adopted by the statutory rules.

Division 2 Restrictions on registration of certain written-off vehicles

83 NSW written-off vehicles register (cf VR Act, s 16B)

- (1) The Authority is to maintain a register of written-off vehicles (the **NSW written-off vehicles register**) that records information about vehicles that the Authority has reason to believe:
 - (a) are written-off vehicles (**statutory written-off vehicles**), or
 - (b) were previously written-off vehicles but which have since been repaired and then registered (**former written-off vehicles**).
- (2) The register is to contain such information as the Authority thinks appropriate.
- (3) In this section **written-off vehicle** includes any vehicle:
 - (a) that has been assessed to be a total loss by a person in accordance with Division 3, or
 - (b) that has been disposed of to an auto-dismantler by a self-insurer, or
 - (c) that has been demolished or dismantled by an auto-dismantler, or

- (d) that is in the control of an auto-dismantler and is intended to be demolished or dismantled, or
- (e) that was recorded on the register of written-off vehicles on the day on which Part 2AA of the *Road Transport (Vehicle Registration) Act 1997* commenced, or
- (f) that is prescribed by the statutory rules.

84 Registration of written-off vehicles (cf VR Act, s 16C)

- (1) The Authority must not register, renew or transfer the registration of any vehicle (or if the vehicle is registered, the Authority must cancel the registration of the vehicle) if its vehicle identifier is the same as the vehicle identifier of a statutory written-off vehicle or an interstate written-off vehicle.
- (2) However, subsection (1) does not apply if the vehicle is the subject of an authorisation to repair and:
 - (a) the application for registration is accompanied by a certificate of compliance in relation to the vehicle, or
 - (b) the Authority is satisfied that the vehicle is of a class exempt by the statutory rules from the obligation to be the subject of a certificate of compliance.
- (3) If the Authority cancels the registration of a vehicle under this section, the Authority must immediately notify the registered operator of the vehicle of the cancellation.
- (4) Despite section 14 (3) of the *Motor Accidents Compensation Act 1999*, a third-party policy (within the meaning of that Act) is not cancelled immediately upon cancellation of registration of a vehicle under this section and continues to have effect until the day on which the registered operator of the vehicle is given notice of the cancellation of registration.
- (5) The Authority must not register, renew or transfer the registration of a vehicle if to do so would breach a condition imposed by the Authority on an authorisation to repair.
- (6) In this section:

interstate written-off vehicle means a vehicle recorded on a register of written-off vehicles (however described) of another jurisdiction as:

 - (a) a statutory written-off vehicle or similar (being a vehicle that is not permitted to be registered in that jurisdiction by the vehicle registration authority of that jurisdiction), or

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- (b) a repairable written-off vehicle or similar (being a vehicle that may in certain circumstances be registered in that jurisdiction), but only if that vehicle has not been registered in Australia since being so recorded.

85 Authority must refuse certain applications for authorisations (cf VR Act, s 16D)

- (1) The Authority must refuse an application for the issue of an authorisation to repair a written-off vehicle if the Authority reasonably believes any one or more of the following:
 - (a) that the vehicle has suffered non-repairable damage,
 - (b) that the vehicle is prescribed by the statutory rules as a non-eligible vehicle,
 - (c) that the applicant is prescribed by the statutory rules as a non-eligible person.
- (2) This section does not limit the circumstances in which the Authority may refuse the issue of an authorisation to repair.

86 Applications for authorisations (cf VR Act, s 16E)

- (1) An eligible person may apply to the Authority for the issue of an authorisation to repair a vehicle.
- (2) An application for the issue of an authorisation:
 - (a) must be in a form approved by the Authority, and
 - (b) must be accompanied by a record of an assessment made in accordance with Division 3 that the vehicle has not suffered non-repairable damage, and
 - (c) must be accompanied by any fee fixed for that purpose by the Authority under section 271.
- (3) The Authority may require an applicant to submit such other information as the Authority thinks fit.
- (4) In determining an application, the Authority must take into consideration any factors prescribed by the statutory rules.
- (5) The Authority may refuse the application or may issue an authorisation to repair the vehicle unconditionally or subject to any of the following conditions:
 - (a) a condition that the vehicle cannot be registered in the name of a person other than the applicant for a specified period or for an indefinite period,
 - (b) any condition of a class prescribed by the statutory rules.

- (6) If the vehicle is of a class of vehicles exempt by the statutory rules from the obligation to be the subject of a certificate of compliance, the authorisation to repair must state that fact.

Division 3 Assessment of damaged vehicles

87 Definitions (cf VR Act, s 16F)

In this Division:

assessor means an insurer, self-insurer, auto-dismantler, dealer or other person prescribed by the statutory rules.

vehicle damage assessment means an assessment made by or on behalf of, and in the course of business of, an assessor as to whether or not a notifiable vehicle (anywhere in Australia) is a total loss.

88 Notifiable vehicles (cf VR Act, s 16G)

- (1) For the purposes of this Part, a vehicle is a **notifiable vehicle** if the vehicle:
- (a) complies (or complied at the time of manufacture) with the requirements of all Australian Design Rules adopted by the statutory rules applying to it, and
 - (b) is not more than 15 years old (age being determined from the date of manufacture) or, if the statutory rules prescribe a different age, not more than the age so prescribed, and
 - (c) is located anywhere in Australia but is linked to this jurisdiction because:
 - (i) it is registered in this jurisdiction, or
 - (ii) it was last registered in this jurisdiction, or
 - (iii) it has never been registered in Australia, but one or more of the incidents that caused the vehicle to be assessed as a total loss occurred in this jurisdiction, and
 - (d) is not:
 - (i) a motor vehicle that has a GVM of more than 4.5 tonnes, or
 - (ii) a trailer that has a GVM of more than 4.5 tonnes.
- (2) For the purposes of this Part, a vehicle is also a **notifiable vehicle** if it is a vehicle prescribed by the statutory rules.

89 Vehicles that are a total loss (cf VR Act, s 16H)

- (1) For the purposes of this Part, a vehicle is a *total loss* if it has been damaged, dismantled or demolished to the extent that its salvage value as a written off vehicle plus the cost of repairing the vehicle for use on a road would be more than:
 - (a) the market value of the vehicle immediately before the damage, dismantling or demolition, or
 - (b) if the vehicle is insured for a specified amount (known as the sum insured), that specified amount.
- (2) The statutory rules may:
 - (a) prescribe other cases as cases in which a vehicle is a total loss for the purposes of this Part, and
 - (b) prescribe exceptions to this section.
- (3) In this section:

market value of a vehicle means the price that the vehicle would bring at open market, as determined (having regard to local market prices and the age and condition of the vehicle) by the person who assesses whether or not the vehicle is a total loss.

salvage value of a vehicle means the value of the vehicle if sold for scrap or parts, or in a damaged state, as determined by the person who assesses whether or not the vehicle is a total loss.

90 Assessments as to whether a vehicle is a total loss (cf VR Act, s 16I)

- (1) An assessor must ensure that any vehicle damage assessment made by or on behalf of the assessor is made by a person who:
 - (a) has the training, qualification or experience prescribed by the statutory rules for the purposes of this section, or
 - (b) acts on the advice of a person who has such training, qualifications or experience.Maximum penalty: 20 penalty units.
- (2) The Authority may, by notice in writing, exempt a person from subsection (1), before the relevant assessment is carried out. Such an exemption has effect only for the time specified in the exemption and if any conditions to which it is subject are complied with.

91 Factors relevant to assessments (cf VR Act, s 16J)

An assessor must ensure that any vehicle damage assessment made by or on behalf of the assessor:

- (a) includes an assessment of whether the vehicle has suffered non-repairable damage, and

- (b) bases any calculation of the cost of repair of the vehicle (for the purposes of assessing whether the vehicle is a total loss) on the standard of repairs, and the repair methods, prescribed by the statutory rules in relation to vehicles of that type.

Maximum penalty:

- (a) in the case of a corporation, 250 penalty units for a first offence or 500 penalty units for a second or subsequent offence, or
- (b) in any other case, 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence.

92 Provision of results of assessments (cf VR Act, s 16K)

- (1) An assessor must, if requested to do so by the registered operator or owner of a notifiable vehicle or a person authorised by the Authority, provide the operator, owner or person with a written record of any vehicle damage assessment made by or on behalf of the assessor of that vehicle setting out:

- (a) a statement as to whether or not the vehicle has suffered non-repairable damage, and
- (b) any other information prescribed by the statutory rules.

Maximum penalty: 20 penalty units.

- (2) An assessor must, if directed in writing to do so by an authorised officer, provide the Authority with a written record of any vehicle damage assessment made by or on behalf of the assessor setting out:

- (a) a statement as to whether or not the vehicle has suffered non-repairable damage, and
- (b) any other information specified in the direction.

Maximum penalty: 20 penalty units.

- (3) More than one direction may be issued under subsection (2).

Note. Section 307C of the *Crimes Act 1900* makes it an offence for a person to produce a record under this section if the person does so knowing that the record is false or misleading.

93 Information about written-off and demolished vehicles (cf VR Act, s 16L)

- (1) An assessor must ensure that the Authority is provided with the information required by the statutory rules concerning each notifiable vehicle that is assessed as being a total loss in the course of a vehicle damage assessment conducted by or on behalf of the assessor:

- (a) within 7 days after the assessment and before the vehicle is sold or otherwise disposed of, or
- (b) within any other time prescribed by the statutory rules.

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- (2) A self-insurer must ensure that the Authority is provided with the information required by the statutory rules concerning each notifiable vehicle that is taken to be a total loss by virtue of being disposed of by the self-insurer (anywhere in Australia) to an auto-dismantler:
- (a) within 7 days after the vehicle is disposed of, or
 - (b) within any other time prescribed by the statutory rules.
- (3) An auto-dismantler must ensure that the Authority is provided with the information required by the statutory rules concerning each notifiable vehicle that the auto-dismantler intends to demolish or dismantle (anywhere in Australia) in the course of the business carried on by the auto-dismantler:
- (a) within 7 days after the auto-dismantler forms the intention to demolish or dismantle the vehicle, or
 - (b) within any other time prescribed by the statutory rules.
- (4) Despite subsection (3), the information must be provided before the part of the vehicle to which the vehicle identifier is attached is sold or otherwise disposed of.
- (5) A person (other than an insurer) is not guilty of an offence against this section in respect of a failure to provide information concerning a notifiable vehicle if the person proves to the court's satisfaction that the person believed, on reasonable grounds, that the required information concerning the vehicle had already been provided to the Authority by another person under this section.
- Maximum penalty: 20 penalty units.

94 Maintenance of records (cf VR Act, s 16M)

- (1) An assessor must maintain, and keep for at least 7 years, the following records in relation to each vehicle damage assessment made by or on behalf of the assessor:
- (a) the records required by the statutory rules,
 - (b) any other records that the Authority, by notice in writing, requires the assessor to maintain.
- (2) An authorised officer may, for the purposes of determining whether this Part has been complied with, direct in writing any person to produce any records required to be maintained under this Division.
- (3) A person must comply with such a direction within the time specified in the direction.
- Maximum penalty: 20 penalty units.

95 False assessments (cf VR Act, s 16N)

A person must not induce, attempt to influence, or coerce the making of a false vehicle damage assessment or a vehicle damage assessment that does not comply with this Part.

Maximum penalty:

- (a) in the case of a corporation, 250 penalty units for a first offence or 500 penalty units for a second or subsequent offence, or
- (b) in any other case, 50 penalty units for a first offence or 100 penalty units for a second or subsequent offence.

96 Removal of vehicle identifiers (cf VR Act, s 16O)

An assessor must ensure that reasonable steps are taken to remove, deface, obliterate or destroy the vehicle identifier on any part of a vehicle that has been assessed as being a total loss by or on behalf of the assessor, if required to do so:

- (a) by the statutory rules, or
- (b) by notice in writing served on the assessor by the Authority.

Maximum penalty: 20 penalty units.

97 Duty to attach written-off warning label to written-off vehicles (cf VR Act, s 16P)

- (1) An assessor must ensure that a written-off warning label is attached, in accordance with the statutory rules, at all times to any vehicle in the person's possession or control that has been assessed as being a total loss:
 - (a) to the part of the vehicle to which the vehicle identifier is attached (in the case of a dismantled vehicle), or
 - (b) to the vehicle (in any other case).
- (2) The label must be attached within the period in which the information must be provided to the Authority about the vehicle under section 93.
Maximum penalty: 20 penalty units.

Division 4 General

98 Certificates of compliance (cf VR Act, s 16Q)

- (1) A licensed repairer may issue, in a form approved by the Authority, a certificate of compliance in relation to a vehicle if:
 - (a) the repairer's licence is of a class that authorises the repairer to repair the type of vehicle, and the type of vehicle damage, the subject of certification, and

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- (b) the licensed repairer is satisfied that the standard of repairs, and the repair methods used, are in accordance with the requirements adopted by or set out in the statutory rules.
- (2) A licensed repairer must not issue a certificate of compliance that the repairer knows, or ought reasonably to know, is false or misleading in a material particular.
Maximum penalty: 20 penalty units.
- (3) A person must not attempt to obtain a certificate of compliance by a false or misleading statement or any misrepresentation or other dishonest means.
Maximum penalty: 20 penalty units.
- (4) The Authority may do any of the following in respect of a vehicle that is the subject of a certificate of compliance referred to in subsection (2) or (3):
- (a) amend the NSW written-off vehicles register accordingly,
 - (b) suspend the registration of the vehicle,
 - (c) refuse to transfer the registration of the vehicle,
 - (d) cancel the registration of the vehicle.
- (5) The Authority must not cancel the registration of a vehicle unless it has first given the registered operator of the vehicle at least 14 days' notice of the proposed cancellation.
- (6) A person who is not a licensed repairer must not purport to issue a certificate of compliance or advertise that the person is willing to issue a certificate of compliance.
Maximum penalty: 1,000 penalty units.

99 Access to NSW written-off vehicles register (cf VR Act, s 16R)

- (1) The Authority is not to provide access to the NSW written-off vehicles register except as provided by this section.
- (2) The Authority may allow the following to have access to the register:
- (a) a government department, a public authority, a local authority or the NSW Police Force,
 - (b) a government department, a public authority, a local authority or the police force of another jurisdiction,
 - (c) Austroads, but only for the purpose of its national database of written-off vehicles and information about them,
 - (d) an insurer, self-insurer, auto-dismantler or dealer,

- (e) any other person or body, or class of persons or bodies, prescribed by the statutory rules.
- (3) The Authority may provide a person or body with information contained in the register.
- (4) The Authority may:
 - (a) impose any conditions that the Authority considers appropriate on the provision of access, or the provision of information, under this section, or
 - (b) limit the level of detail to which access is provided under this section as the Authority considers appropriate.

100 Interference with NSW written-off vehicles register (cf VR Act, s 16S)

A person must not, except as authorised by the Authority:

- (a) obtain access to the NSW written-off vehicles register or information contained in the register, or
- (b) make, alter or delete an entry in the register, or
- (c) interfere with the register in any other way.

Maximum penalty: 250 penalty units.

101 Unauthorised disclosure of information (cf VR Act, s 16T)

A person must not disclose any information obtained in connection with the administration or execution of this Part, except:

- (a) in connection with the administration or execution of this Part or the statutory rules made for the purposes of this Part, or
- (b) for the purposes of Austroads administering a national database of written-off vehicles and information about them and allowing driver licensing and vehicle registration authorities in the other States and Territories to have access to the information in the national database, or
- (c) for the purposes of any legal proceedings arising out of this Act or the statutory rules or of any report of such proceedings, or
- (d) to the Motor Vehicle Repair Industry Authority constituted under the *Motor Vehicle Repairs Act 1980* for the purposes of any disciplinary or legal proceedings arising out of that Act or the regulations under that Act, or
- (e) to Transport for NSW for the purpose of assisting Transport for NSW to exercise its functions, or
- (f) in the circumstances prescribed by the statutory rules.

Maximum penalty: 20 penalty units.

102 Certificate evidence (cf VR Act, s 16U)

A statement in a certificate purporting to have been issued by an Australian Authority or Australian authorised officer that, at a specified time or during a specified period, a specified vehicle was or was not on the NSW written-off vehicles register or a register of written-off vehicles (however described) kept under a law of another jurisdiction is admissible as evidence in any legal proceedings and is, until admissible evidence is given to the contrary, evidence of the matter certified.

103 Statutory rules concerning written-off vehicles (cf VR Act, s 16V)

- (1) Without limiting Chapter 2, the statutory rules may make provision for or with respect to the following matters:
 - (a) any matter relating to the registration of written-off vehicles,
 - (b) any matter relating to the issue of authorisations to repair,
 - (c) any matter relating to the making of vehicle damage assessments under this Part, including the conduct or duties of persons making those assessments,
 - (d) any matter relating to the making and keeping of records under this Part and the furnishing of information and records,
 - (e) any matter relating to the issue of certificates of compliance, including the conduct or duties of persons issuing certificates of compliance,
 - (f) any matter relating to written-off warning labels,
 - (g) the disclosure of information obtained in connection with the administration or execution of this Part.
- (2) The statutory rules may require any person to provide the Authority with the information prescribed by the statutory rules concerning any notifiable vehicle that is assessed as being a total loss while in the care, custody or control of the person (anywhere in Australia).
- (3) The statutory rules may exempt, with or without conditions, any vehicle, any class of vehicles or any class of persons from the operation of all or any of the provisions of this Part.
- (4) The statutory rules may adopt a provision set out in any specified publication.

Clause 104	Road Transport Bill 2013
Chapter 4	Vehicle registration
Part 4.6	Other provisions relating to vehicle registration

104 Determination of first offences and second and subsequent offences against this Part

For the purposes of section 9 in its application to offences against provisions of this Part, it is declared that there is no applicable re-offending period for such offences.

Note. Section 9 provides for the determination of whether an offence against a provision of this Act or the statutory rules is a first offence or a second or subsequent offence.

Part 4.6 Other provisions relating to vehicle registration

105 Status of unregistered vehicles having permits (cf VR Act, s 29)

An unregistered registrable vehicle in respect of which an unregistered vehicle permit is in force is taken for the purposes of this Act or any other Act relating to the registration or licensing of vehicles to be a registered vehicle.

106 Fees for registration of vehicles of Crown and NSW Government agencies (cf VR Act, s 31)

Any fees relating to the registration of a registrable vehicle payable under this Act:

- (a) if the vehicle is owned by the Crown—are payable by the Crown, or
- (b) if the vehicle is owned by a NSW Government agency—are payable by the agency.

Chapter 5 Safety and traffic management

Part 5.1 Alcohol and other drug use

Division 1 Interpretation

107 Definitions (cf STM Act, s 8)

(1) General definitions

In this Part:

applicable driver licence means the following:

- (a) a licence (however described) issued under a law in force in any jurisdiction authorising the holder to drive one or more classes of motor vehicle on a road,
- (b) a driver licence receipt for a licence referred to in paragraph (a),
- (c) a foreign driver licence.

Note. The term ***driver licence receipt*** is defined in section 4 (1) to mean a receipt that:

- (a) is issued following an application for an Australian driver licence and after payment of any applicable fee, and
- (b) authorises the holder to drive one or more classes of motor vehicle on a road or road related area.

applicable learner licence means the following:

- (a) a learner licence or a driver licence receipt for such a licence,
- (b) a foreign driver licence that has the same or similar effect as a licence referred to in paragraph (a).

Note. The term ***learner licence*** is defined in section 4 (1) to mean a licence or permit issued to a person under a law in force in any jurisdiction to authorise the person to drive a motor vehicle on a road or road related area for the purpose of learning to drive a motor vehicle.

applicable provisional licence means the following:

- (a) a provisional P1 licence or a provisional P2 licence,
- (b) a licence (however described) issued under a law in force in any jurisdiction, or a foreign driver licence, that has the same or similar effect as a licence referred to in paragraph (a) or is prescribed by the statutory rules as an equivalent licence for the purposes of this definition,
- (c) a driver licence receipt for a licence referred to in paragraph (a) or for a licence of any jurisdiction referred to in paragraph (b).

foreign driver licence means a licence (however described) to drive a motor vehicle that is:

- (a) held by a person who is ordinarily resident in a foreign country and not a permanent resident of Australia, and
- (b) issued in the country in which the person is ordinarily resident.

learner driver, in relation to a motor vehicle, means:

- (a) a person who holds an applicable learner licence for motor vehicles of a class that includes the motor vehicle, or
- (b) a person who is learning to drive the motor vehicle in circumstances where:
 - (i) the person holds an applicable driver licence of a class of motor vehicles that does not include the motor vehicle, and
 - (ii) the person is permitted under the statutory rules to learn to drive the motor vehicle despite not having an applicable driver licence for motor vehicles of that class.

novice driver, in relation to a motor vehicle, means:

- (a) a person who holds an applicable learner licence or applicable provisional licence for motor vehicles of a class that includes the motor vehicle, or
- (b) a person who is not authorised to drive the motor vehicle in this jurisdiction because the person (in this jurisdiction or elsewhere) has had the person's application for an applicable learner licence or applicable provisional licence of a class that includes the motor vehicle refused, or
- (c) a person who is not authorised to drive the motor vehicle in this jurisdiction because the person (in this jurisdiction or elsewhere) has ceased to hold an applicable learner licence or applicable provisional licence of a class that includes the motor vehicle as a result of:
 - (i) the cancellation or suspension of the licence, or
 - (ii) the disqualification of the person from holding a driver licence, or
 - (iii) the expiry of the licence, or
- (d) a person who is not authorised to drive the motor vehicle in this jurisdiction because the person (in this jurisdiction or elsewhere) has never obtained an applicable driver licence for any class of motor vehicle.

(2) **Meaning of “special category driver”**

For the purposes of this Part, a person is a *special category driver* in respect of a motor vehicle if:

- (a) the person holds an applicable learner licence or applicable provisional licence for motor vehicles of a class that includes the motor vehicle, or
- (b) the person is not authorised to drive the motor vehicle in this jurisdiction because:
 - (i) the person (in this jurisdiction or elsewhere) has had the person’s application for a relevant applicable driver licence refused, or
 - (ii) the person (in this jurisdiction or elsewhere) has ceased to hold a relevant applicable driver licence as a result of the cancellation or suspension of the licence, or
 - (iii) the person (in this jurisdiction or elsewhere) has ceased to hold an applicable learner licence or applicable provisional licence as a result of the expiry of the licence, or
 - (iv) the person (in this jurisdiction or elsewhere) has ceased to hold a relevant applicable driver licence (other than an applicable learner licence or provisional licence) as a result of the expiry of the licence, but only where the licence has been expired for a period of more than 6 months, or
 - (v) the person (in this jurisdiction or elsewhere) has been disqualified from driving, or
 - (vi) the person has never obtained a relevant applicable driver licence, or
- (c) the motor vehicle is being driven for hire or reward, or in the course of any trade or business, as a public passenger vehicle within the meaning of the *Passenger Transport Act 1990*, or
- (d) the motor vehicle is a coach, or
- (e) the motor vehicle is a motor vehicle that has a GVM exceeding 13.9 tonnes, or
- (f) the motor vehicle is being used in combination with a trailer in circumstances where the motor vehicle and trailer combination has a GCM exceeding 13.9 tonnes, or

- (g) the motor vehicle (or any trailer being towed by the motor vehicle):
 - (i) is required, because it carries dangerous goods within the meaning of the *Dangerous Goods (Road and Rail Transport) Act 2008*, to have a sign exhibited on it by regulations under that Act, or under any code prescribed for the purposes of this paragraph by statutory rules under this Act, or
 - (ii) carries any radioactive substance within the meaning of the *Radiation Control Act 1990*.

(3) **Meaning of “special category supervisor”**

For the purposes of this Part, a person is a *special category supervisor* in respect of a motor vehicle if, were the person driving the motor vehicle, the person would be a special category driver in respect of the motor vehicle.

108 Prescribed concentrations of alcohol (cf STM Act, s 8A)

In this Part:

novice range prescribed concentration of alcohol means a concentration of more than zero grams, but less than 0.02 grams, of alcohol in 210 litres of breath or 100 millilitres of blood.

special range prescribed concentration of alcohol means a concentration of 0.02 grams or more, but less than 0.05 grams, of alcohol in 210 litres of breath or 100 millilitres of blood.

low range prescribed concentration of alcohol means a concentration of 0.05 grams or more, but less than 0.08 grams, of alcohol in 210 litres of breath or 100 millilitres of blood.

middle range prescribed concentration of alcohol means a concentration of 0.08 grams or more, but less than 0.15 grams, of alcohol in 210 litres of breath or 100 millilitres of blood.

high range prescribed concentration of alcohol means a concentration of 0.15 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.

109 Measurement of alcohol concentrations (cf STM Act, s 8B)

- (1) For the purposes of this Act, the concentration of alcohol present in a person’s breath or blood may be expressed as follows:
 - (a) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the breath—the amount of alcohol in grams in 210 litres of breath,

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- (b) in the case of a sample of breath that is measured by a breath analysing instrument or other breath testing device that provides a reading or result by reference to alcohol present in the blood—the amount of alcohol in grams in 100 millilitres of blood,
 - (c) in the case of a sample of blood—the amount of alcohol in grams in 100 millilitres of blood.
- (2) An amount of alcohol in grams present in breath when measured by reference to 210 litres of breath is equivalent to the same amount of alcohol in grams present in blood when measured by reference to 100 millilitres of blood.
 - (3) Accordingly, any offence against this Act relating to the presence of a specified concentration of alcohol in a person's breath or blood at the time of the occurrence of a particular event is a single offence regardless of whether the concentration of alcohol concerned is measured by reference to the amount of alcohol present in breath or in blood (or both).

Division 2 Offences involving alcohol or other drugs

110 Presence of prescribed concentration of alcohol in person's breath or blood (cf STM Act, ss 9, 10, 11 and 11A)

(1) Offence—novice range prescribed concentration of alcohol

A novice driver must not, while there is present in the driver's breath or blood the novice range prescribed concentration of alcohol:

- (a) drive the motor vehicle, or
- (b) occupy the driving seat of the motor vehicle and attempt to put the motor vehicle in motion.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

(2) Offence—special range prescribed concentration of alcohol

A person must not, while there is present in the person's breath or blood the special range prescribed concentration of alcohol:

- (a) if the person is a special category driver in respect of a motor vehicle—drive the motor vehicle, or
- (b) if the person is a special category driver in respect of a motor vehicle—occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or

- (c) if the person is a special category supervisor in respect of a motor vehicle and the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence)—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

(3) **Offence—low range prescribed concentration of alcohol**

A person must not, while there is present in the person's breath or blood the low range prescribed concentration of alcohol:

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence)—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

(4) **Offence—middle range prescribed concentration of alcohol**

A person must not, while there is present in the person's breath or blood the middle range prescribed concentration of alcohol:

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence)—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty: 20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).

(5) **Offence—high range prescribed concentration of alcohol**

A person must not, while there is present in the person's breath or blood the high range prescribed concentration of alcohol:

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or

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- (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence)—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

Note. Division 1 of Part 7.4 provides for the disqualification of persons from holding driver licences for certain offences (including offences against this section).

(6) **Alternative verdicts for lesser offences**

If the court on a prosecution of a person for an offence against any subsection of this section is not satisfied that the offence is proven but is satisfied that the person has committed an offence against any other subsection of this section of a less serious nature, the court may acquit the person of the offence with which the person is charged and find the person guilty of an offence against the other subsection. The person is liable to be punished accordingly.

(7) For the purposes of subsection (6):

- (a) an offence against subsection (1), (2), (3) or (4) is of a less serious nature than an offence against subsection (5), and
- (b) an offence against subsection (1), (2) or (3) is of a less serious nature than an offence against subsection (4), and
- (c) an offence against subsection (1) or (2) is of a less serious nature than an offence against subsection (3), and
- (d) an offence against subsection (1) is of a less serious nature than an offence against subsection (2).

(8) **Presence of higher concentration of alcohol not defence**

It is not a defence to a prosecution for an offence against a subsection of this section if the defendant proves that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, a greater concentration of alcohol was present in the defendant's breath or blood than the prescribed concentration of alcohol referred to in the subsection.

(9) **Defence for offence relating to novice range prescribed concentration of alcohol**

It is a defence to a prosecution for an offence against subsection (1) if the defendant proves to the court's satisfaction that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, the presence in the defendant's breath or blood of the novice

range prescribed concentration of alcohol was not caused (in whole or in part) by any of the following:

- (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance),
- (b) the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.

111 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine (cf STM Act, s 11B)

(1) Presence of prescribed illicit drug in person's oral fluid, blood or urine

A person must not, while there is present in the person's oral fluid, blood or urine any prescribed illicit drug:

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence)—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

(2) If a person is charged with an offence against subsection (1):

- (a) the court attendance notice may allege that more than one prescribed illicit drug was present in the oral fluid, blood or urine of the person and the proceedings are not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the court attendance notice, and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that there was present in the oral fluid, blood or urine of the defendant:
 - (i) a drug described in the court attendance notice, or
 - (ii) a combination of drugs any one or more of which was or were described in the court attendance notice.

(3) Presence of morphine or cocaine in person's blood or urine

A person must not, while there is present in the person's blood or urine any morphine or cocaine:

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or

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- (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence)—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty: 10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence).

- (4) If a person is charged with an offence against subsection (3):
- (a) the court attendance notice may allege that both morphine and cocaine were present in the blood or urine of the person and the proceedings are not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the court attendance notice, and
- (b) the offence is proved if the court is satisfied beyond reasonable doubt that there was present in the blood or urine of the defendant:
- (i) a drug described in the court attendance notice, or
- (ii) a combination of drugs any one or more of which was or were described in the court attendance notice.

(5) **Defence for offence relating to presence of morphine in person's blood or urine**

It is a defence to a prosecution for an offence against subsection (3) if the defendant proves to the court's satisfaction that, at the time the defendant engaged in the conduct that is alleged to have contravened the subsection, the presence in the defendant's blood or urine of morphine was caused by the consumption of a substance for medicinal purposes.

(6) **Meaning of consumption for medicinal purposes**

In this section, a substance is consumed for medicinal purposes only if it is:

- (a) a drug prescribed by a medical practitioner taken in accordance with a medical practitioner's prescription, or
- (b) a codeine-based medicinal drug purchased from a pharmacy that has been taken in accordance with the manufacturer's instructions.

Note. Division 1 of Part 7.4 provides for the disqualification of persons from holding driver licences for certain offences (including offences against this section).

The offences of driving with a prescribed concentration of alcohol in the blood, and of driving under the influence of alcohol or any other drug, are dealt with in sections 110 and 112, respectively.

112 Use or attempted use of a vehicle under the influence of alcohol or any other drug (cf STM Act, s 12)

- (1) A person must not, while under the influence of alcohol or any other drug:
- (a) drive a vehicle, or
 - (b) occupy the driving seat of a vehicle and attempt to put the vehicle in motion, or
 - (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence)—occupy the seat in or on a motor vehicle next to a learner driver who is driving the vehicle.

Maximum penalty:

- (a) in the case of a first offence to which paragraph (a) or (b) relates—20 penalty units or imprisonment for 9 months, or both, or
 - (b) in the case of a second or subsequent offence to which paragraph (a) or (b) relates—30 penalty units or imprisonment for 12 months, or both, or
 - (c) in the case of an offence to which paragraph (c) relates—20 penalty units.
- (2) If a person is charged with an offence against subsection (1):
- (a) the court attendance notice may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the court attendance notice, and
 - (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of:
 - (i) a drug described in the court attendance notice, or
 - (ii) a combination of drugs any one or more of which was or were described in the court attendance notice.

Note. Division 1 of Part 7.4 provides for the disqualification of persons from holding driver licences for certain offences (including offences against this section).

113 Detention of vehicle in certain cases (cf STM Act, s 31)

- (1) A police officer may take charge of and remove any vehicle in respect of which an offence against section 110 or 112 has been committed to any convenient place for safe keeping.
- (2) The court adjudicating may, if it is of the opinion that there was reasonable cause for any such taking charge, removal and safe keeping, order the costs, charges and expenses of it to be paid by the offender.

114 Testing for alcohol and other drug use (cf STM Act, Divs 3–5 and 7 of Pt 2)

Schedule 3 contains provisions relating to the procedures for, and the use of evidence obtained from, testing for alcohol or other drug use by drivers and other road users.

Part 5.2 Speeding and other dangerous driving

Division 1 Speeding and other dangerous driving offences

115 Races, attempts on speed records and other speed trials (cf STM Act, s 40)

- (1) A person must not organise, promote or take part in:
- (a) any race between vehicles on a road, or
 - (b) any attempt to break any vehicle speed record on a road, or
 - (c) any trial of the speed of a vehicle on a road, or
 - (d) any competitive trial designed to test the skill of any vehicle driver or the reliability or mechanical condition of any vehicle on a road,

unless the written approval of the Commissioner of Police to the holding or making of the race, attempt or trial has been obtained.

Maximum penalty: 30 penalty units (in the case of a first offence) or 30 penalty units or imprisonment for 9 months or both (in the case of a second or subsequent offence).

- (2) The Commissioner of Police may:
- (a) grant or refuse approval to the holding or making of a race, attempt or trial referred to in subsection (1), and
 - (b) impose any condition (whether of general or limited application) on the approval that the Commissioner considers necessary in the interests of public safety and convenience.

Note. Part 7.8 allows a person aggrieved by a decision of the Commissioner of Police under this section to appeal to the Local Court against the decision.

- (3) A person taking part in (or the organiser or promoter) of any race, attempt or trial referred to in subsection (1) must comply with any condition imposed on an approval granted under subsection (2) in respect of the race, attempt or trial.

Maximum penalty: 20 penalty units.

- (4) If a person is convicted by a court of an offence against this section in relation to a motor vehicle or trailer:
- (a) except as provided by paragraph (b)—the person is disqualified from holding a driver licence by the conviction and without any specific order of a court for 12 months, or
 - (b) if the court at the time of the conviction thinks fit to order a shorter or a longer period of disqualification—the person is disqualified from holding a driver licence for the period specified in the order.
- Note.** Section 207 provides for the effect of a disqualification (whether or not by order of a court).
- (5) Any disqualification under this section is in addition to any penalty imposed for the offence.
- (6) This section does not apply to any test of the slow running of a vehicle.

116 Conduct associated with road and drag racing and other activities (cf STM Act, s 41)

- (1) A person must not operate a motor vehicle on a road in such a manner as to cause the vehicle to undergo sustained loss of traction by one or more of the driving wheels (or, in the case of a motor cycle, the driving wheel) of the vehicle.
Maximum penalty: 10 penalty units.
- (2) A person must not:
- (a) operate a motor vehicle contrary to subsection (1) knowing that any petrol, oil, diesel fuel or other inflammable liquid has been placed on the surface of the road beneath one or more tyres of the vehicle, or
 - (b) do, or omit to do, any other thing that prolongs, sustains, intensifies or increases loss of traction as referred to in subsection (1), or
 - (c) repeatedly operate a motor vehicle contrary to subsection (1), or
 - (d) operate a motor vehicle contrary to subsection (1) at a time, or on a road in a place, knowing that there is an appreciable risk that operation of the vehicle in that manner at that time and place is likely to interfere with the amenity of the locality or the peaceful enjoyment of any person in the locality or make the place unsafe for any person in the locality, or
 - (e) willingly participate in any group activity involving the operation of one or more vehicles contrary to subsection (1), or

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- (f) organise, promote or urge any person to participate in, or view, any group activity involving the operation of one or more vehicles contrary to subsection (1), or
 - (g) photograph or film a motor vehicle being operated contrary to subsection (1) for the purpose of organising or promoting the participation of persons in any such group activity.

Maximum penalty: 30 penalty units (in the case of a first offence) or 30 penalty units or imprisonment for 9 months or both (in the case of a second or subsequent offence).

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant proves to the court's satisfaction that the vehicle, although operated as referred to in subsection (1), was not so operated deliberately.
- (4) A person must not, on a road, engage in conduct prescribed by statutory rules made for the purposes of this section, being conduct associated with the operation of a motor vehicle for speed competitions or other activities specified or described in the statutory rules.
Maximum penalty: 5 penalty units.
- (5) Nothing in this section applies to the operation of a motor vehicle for the purposes of a race, attempt or trial undertaken in accordance with an approval given under section 115 by the Commissioner of Police.
- (6) In considering whether an offence has been committed under subsection (2) (d), the court is to have regard to all the circumstances of the case, including the following:
 - (a) the nature and use of the road on which the offence is alleged to have been committed,
 - (b) the nature and use of any premises in the locality of the road in which the offence is alleged to have been committed.
- (7) A person who is convicted by a court of an offence against subsection (2) (a), (b), (c) or (d) in relation to a motor vehicle is disqualified from holding a driver licence by the conviction and without any specific order of the court for 12 months.
- (8) Any disqualification under this section is in addition to any penalty imposed for the offence.

117 Negligent, furious or reckless driving (cf STM Act, s 42)

- (1) A person must not drive a motor vehicle on a road negligently.
Maximum penalty:
 - (a) if the driving occasions death—30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty

- units or imprisonment for 2 years or both (in the case of a second or subsequent offence), or
- (b) if the driving occasions grievous bodily harm—20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence), or
 - (c) if the driving does not occasion death or grievous bodily harm—10 penalty units.
- (2) A person must not drive a motor vehicle on a road furiously, recklessly or at a speed or in a manner dangerous to the public.
Maximum penalty: 20 penalty units or imprisonment for 9 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 12 months or both (in the case of a second or subsequent offence).
- (3) In considering whether an offence has been committed under this section, the court is to have regard to all the circumstances of the case, including the following:
- (a) the nature, condition and use of the road on which the offence is alleged to have been committed,
 - (b) the amount of traffic that actually is at the time, or which might reasonably be expected to be, on the road.
- (4) In this section:
grievous bodily harm includes any permanent or serious disfigurement.

118 Menacing driving (cf STM Act, s 43)

(1) **Offence—intent to menace**

A person must not drive a motor vehicle on a road in a manner that menaces another person with the intention of menacing that other person.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

(2) **Offence—possibility of menace**

A person must not drive a motor vehicle on a road in a manner that menaces another person if the person ought to have known that the other person might be menaced.

Maximum penalty: 20 penalty units or imprisonment for 12 months or both (in the case of a first offence) or 30 penalty units or imprisonment for 18 months or both (in the case of a second or subsequent offence).

(3) **Application of section**

This section applies:

- (a) whether the other person is menaced by a threat of personal injury or by a threat of damage to property, and
- (b) whether or not that person or that property is on a road.

(4) **Defence**

A person is not guilty of an offence against this section if the person could not, in the circumstances, reasonably avoid menacing the other person.

(5) **Double jeopardy**

A person is not liable to be convicted of:

- (a) both an offence against subsection (1) and an offence against subsection (2), or
- (b) both an offence against this section and an offence against section 117,

arising out of a single incident.

Division 2 Speed measuring evasion articles

119 Sale, purchase or use of prohibited speed measuring evasion articles

(cf STM Act, s 48)

- (1) A person must not sell or offer for sale, or purchase, a prohibited speed measuring evasion article.
Maximum penalty: 20 penalty units.
- (2) A person must not drive a motor vehicle, or cause a motor vehicle or trailer to stand, on a road if a prohibited speed measuring evasion article is fitted or applied to, or carried in, the vehicle or trailer.
Maximum penalty: 20 penalty units.
- (3) The responsible person for a motor vehicle or trailer that is driven or stands on a road in contravention of subsection (2) is guilty of an offence.
Maximum penalty: 20 penalty units.
- (4) It is a defence to a prosecution for an offence against this section if the defendant proves to the court's satisfaction that the article concerned was not designed as a prohibited speed measuring evasion article but was designed for another purpose.

- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant proves to the court's satisfaction that, at the time of the alleged offence:
- (a) the vehicle was in the course of a journey to a place appointed by a police officer, an officer of the Authority or a court, in order to surrender the article, or
 - (b) the vehicle was the subject of a notice, issued in accordance with the statutory rules, requiring the responsible person for the vehicle to remove the article from the vehicle within a specified time and that time had not expired, or
 - (c) the defendant did not know, and in the circumstances could not reasonably be expected to have known, that the article concerned was fitted or applied to, or was being carried in, the vehicle or trailer.

120 Surrender and forfeiture of prohibited speed measuring evasion articles

(cf STM Act, s 49)

- (1) A police officer who reasonably believes that:
- (a) a prohibited speed measuring evasion article is being sold or offered for sale in contravention of section 119 (1), or
 - (b) a motor vehicle or trailer is standing or being driven in contravention of section 119 (2) because of an article fitted or applied to, or carried in, the motor vehicle or trailer,
- may require a person in possession of the article to surrender it immediately to the police officer or, in the case of an article fitted or applied to a motor vehicle or trailer and not immediately removable, may by notice in writing served on the responsible person for the vehicle or trailer require the responsible person to surrender the article within a specified time and in a specified manner to the Commissioner of Police.
- (2) An officer of the Authority who is authorised in writing by the Authority for the purposes of this section and who finds a prohibited speed measuring evasion article fitted or applied to, or carried in, a motor vehicle or trailer may, by notice in writing served on the responsible person for the motor vehicle or trailer, require the person to do either or both of the following:
- (a) remove the article (if it is fitted to the motor vehicle or trailer),
 - (b) surrender the article within a specified time and in a specified manner to the Commissioner of Police.

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- (3) A person must comply with a requirement under subsection (1) or (2), whether or not the person is the owner of the article concerned.
Maximum penalty: 20 penalty units.
 - (4) A court that finds any person guilty of an offence against section 119 or under subsection (3) may order that the article concerned, if not already surrendered in compliance with a requirement under this section, be delivered to the Commissioner of Police within a time and in a manner specified by the court.
 - (5) An article surrendered as required under this section is forfeited to the Crown and may be destroyed or otherwise disposed of at the direction of the Commissioner of Police.
 - (6) No liability attaches to any person on account of the surrender by the person, in compliance with a requirement under this section, of a prohibited speed measuring evasion article of which that person is not the absolute owner.

Part 5.3 Traffic control and monitoring

Division 1 Interpretation

121 Definitions (STM Act, s 50)

In this Part:

camera device means a device that is capable of taking photographs (whether or not in the form of digitised, electronic or computer-generated images).

installation of a prescribed traffic control device includes the painting or formation of any marks or structure that constitute, or form part of, the device.

prescribed traffic control device means a sign, signal, marking, structure or other device to direct or warn traffic on a road (or part of a road) that is prescribed by the statutory rules for the purposes of this definition.

speeding offence means an offence against this Act or the statutory rules of failing to obey a speed limit (including an average speed limit calculated in accordance with Division 3), and includes:

- (a) an offence against regulations made for the purposes of section 11C of the *Road Transport (Vehicle and Driver Management) Act 2005*, and
- (b) a speed limiter offence.

traffic control authority means:

- (a) the Authority, or
- (b) the Commissioner of Police, or
- (c) any other person (or person belonging to a class or description of persons) prescribed by the statutory rules for the purposes of this definition.

Division 2 Use of prescribed traffic control devices

122 Appropriate authority for the purposes of this Division (STM Act, s 51)

For the purposes of this Division, a person has appropriate authority to install or display (or to interfere with, alter or remove) a prescribed traffic control device if:

- (a) the person is a public authority that has been directed by the Authority under Division 1C of Part 6 of the *Transport Administration Act 1988* to install or display (or to interfere with, alter or remove) the device, or
- (b) the person is authorised in writing by the Authority to install or display (or to interfere with, alter or remove) the device, or
- (c) the person is permitted or required to remove the device by or under section 124.

Note. Division 1C of Part 6 of the *Transport Administration Act 1988* enables the Authority to give certain public authorities directions in respect of safety and traffic management.

123 Unauthorised prescribed traffic control devices (STM Act, s 52)

- (1) A person must not, without appropriate authority:
 - (a) install or display a prescribed traffic control device on, above or near a road, or
 - (b) interfere with, alter or remove any prescribed traffic control device installed or displayed on, above or near a road.

Maximum penalty: 20 penalty units.

- (2) A person must not install or display on, above or near a road any sign, signal, marking, structure or other device that might reasonably be mistaken to be a prescribed traffic control device.

Maximum penalty: 20 penalty units.

124 Removal of unauthorised prescribed traffic control devices (STM Act, s 53)

- (1) A traffic control authority (or a person authorised by any such authority) may direct any person who contravenes section 123 to remove, within a time specified by the authority when giving the direction, the sign, signal, marking, structure or other device in respect of which the contravention took place.
- (2) A person to whom a direction is given under subsection (1) must comply with the direction.
Maximum penalty: 20 penalty units.
- (3) Without affecting any liability of any person under section 123 or subsection (2), a traffic control authority may remove, or cause to be removed, any sign, signal, marking, structure or other device installed or displayed in contravention of section 123.

125 Cost of removal of prescribed traffic control device (STM Act, s 54)

- (1) A traffic control authority may, by proceedings brought in a court of competent jurisdiction, recover the expenses that the authority has incurred in exercising the functions conferred by section 124 as a debt from the person who (without appropriate authority) installed or displayed the sign, signal, marking, structure or other device concerned.
- (2) A certificate that is issued on behalf of a traffic control authority by a person prescribed by the statutory rules (or by a person belonging to a class of persons so prescribed) and that states that a specified amount represents the costs incurred by the authority in carrying out specified work or in taking specified action for the purposes of section 124, is admissible in any such proceedings and is prima facie evidence of the fact or facts so stated.

126 Prescribed traffic control devices generally presumed to be lawful (STM Act, s 55)

In proceedings for an offence against this Act or the statutory rules (other than an offence against section 123 (1)), a prescribed traffic control device that is installed or displayed on, above or near a road is conclusively presumed to have been lawfully installed or displayed there under this Act.

Division 3 Use of average speeds to prove speeding offences

127 Definitions (cf STM Act, s 43A (10))

In this Division:

approved certifier means:

- (a) in relation to certifying distances for the purposes of this Division—a registered land surveyor within the meaning of the *Surveying and Spatial Information Act 2002*, and
- (b) in relation to certifying any other matter for the purposes of this Division—a person (or a person belonging to a class of persons) authorised by the Authority to issue certificates for the purposes of this Division.

detection points means the different points on a road by reference to which the average speed of a heavy vehicle is proposed to be calculated for the purposes of this Division.

journey time, in relation to a heavy vehicle between detection points, means the total time that elapsed between the heavy vehicle passing the first and last detection points.

road does not include a road related area.

shortest practicable distance between detection points on a road means the shortest distance between those points that a driver of a heavy vehicle could have used to travel between the points without contravening any road rules applicable to the driver under this Act.

128 When Division may be relied on (cf STM Act, s 43A (1))

A person who brings proceedings for a speeding offence involving a heavy vehicle may, in accordance with this Division, rely on evidence of the average speed of the vehicle between detection points as evidence of the actual speed of the vehicle in order to establish the offence.

129 Evidence and other matters that may be relied on (cf STM Act, s 43A (2) and (3))

- (1) The following provisions apply in relation to proceedings for a speeding offence involving a heavy vehicle in which the person bringing the proceedings seeks to rely on evidence of the average speed of the vehicle:
 - (a) the average speed of the heavy vehicle calculated in accordance with this Division is admissible and is prima facie evidence of the actual speed at which a driver of the vehicle drove the vehicle on a road between the detection points,

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- (b) if there was more than one driver of the heavy vehicle between the detection points—each driver is taken to have driven the heavy vehicle at the average speed of the vehicle calculated in accordance with this Division, except as provided by subsection (2),
- (c) if more than one speed limit applied to a driver of the heavy vehicle between the detection points and the speeding offence is not a speed limiter offence:
- (i) the average speed limit for the driver on a road between the points calculated in accordance with this Division is taken (subject to section 133 (2)) to be the speed limit that applied to the driver at all times on the road between those points, and
 - (ii) a driver of (and any responsible person for) the vehicle may be dealt with under the road transport legislation accordingly,
- (d) the heavy vehicle and any of its drivers are, for the purposes of calculating the vehicle's average speed and any average speed limit, taken to have travelled between the detection points by means of the shortest practicable distance between those points regardless of the actual route taken by any of the drivers between the points.
- (2) Subsection (1) (b) does not apply in relation to any driver of a heavy vehicle if the driver establishes any ground of exculpation prescribed by the statutory rules. The statutory rules may also provide for the kinds of evidence that may be used in connection with establishing any such ground of exculpation (for example, the provision of a statutory declaration).

130 How average speed is to be calculated (cf STM Act, s 43A (4))

The *average speed* of a heavy vehicle between detection points is to be calculated in accordance with the following formula (and expressed in kilometres per hour rounded down to the next whole number):

$$\frac{D_T \times 3600}{T}$$

where:

D_T is the total shortest practicable distance (expressed in kilometres and rounded down to 2 decimal places) that could have been travelled by the vehicle on a road between the detection points.

T is the journey time (expressed in seconds) of the vehicle between the detection points.

131 How average speed limit is to be calculated (cf STM Act, s 43A (5))

The *average speed limit* for a driver of a heavy vehicle on a road between detection points in circumstances where more than one speed limit applied to the driver between those points is to be calculated in accordance with the following formula (and expressed in kilometres per hour rounded up to the next whole number):

$$\frac{D_T}{\frac{D_1}{S_1} + \frac{D_2}{S_2} + \dots + \frac{D_n}{S_n}}$$

where:

D_T is the total shortest practicable distance (expressed in kilometres and rounded down to 2 decimal places) that could be travelled by the vehicle on a road between the detection points.

$D_1, D_2 \dots D_n$ are each part of the total shortest practicable distance D_T between the detection points (expressed in kilometres and rounded down to 2 decimal places) for the different speed limits $S_1, S_2 \dots S_n$ that would have applied to a driver of the vehicle between the detection points.

$S_1, S_2 \dots S_n$ are each of the speed limits (expressed in kilometres per hour) that would have applied to a driver of the vehicle if the vehicle were travelling along the shortest practicable distance D_T on a road between the detection points.

132 Certificate evidence concerning average speed calculations (cf STM Act, s 43A (6))

Any certificates purportedly signed by an approved certifier for the matters concerned that certify any one or more of the following matters may be tendered in proceedings for a speeding offence involving a heavy vehicle in which the person bringing the proceedings seeks to rely on the vehicle's average speed and are admissible in the proceedings and are prima facie evidence of any of the matters that are certified:

- (a) the shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a road between the detection points,

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- (b) if more than one speed limit applied to a driver of a vehicle between the detection points (measured along that shortest practicable distance):
 - (i) each distance for which each speed limit applied to the driver, expressed in kilometres and rounded down to 2 decimal places, and
 - (ii) the average speed limit calculated in accordance with this Division that applied to the driver between the points (including an average speed limit calculated in accordance with this Division using computer programs or electronic equipment),
 - (c) the average speed calculated in accordance with this Division at which a vehicle travelled between the points (including an average speed calculated in accordance with this Division using computer programs or electronic equipment).

133 Relationship of Division with other laws (cf STM Act, s 43A (7)–(9))

- (1) This Division is in addition to, and does not derogate from, any other mode of proof of the speed of a heavy vehicle.
- (2) Without limiting subsection (1), a court in proceedings for a speeding offence in which the person bringing the proceedings is seeking to rely on evidence of the average speed of the vehicle may convict a person of the offence relying on evidence of the actual speed of the vehicle at a particular point of its journey between detection points (instead of evidence of an average speed or average speed limit) if the court is satisfied that:
 - (a) evidence in the proceedings (other than evidence establishing the average speed) establishes the actual speed at which the driver was driving, and the actual speed limit that applied to the driver, at that point, and
 - (b) the use of the actual speed and actual speed limit rather than the average speed (and, where relevant, the average speed limit) demonstrates that the driver exceeded the speed limit by a greater speed than that indicated by the use of the average speed or average speed limit.

Note. Assume, for example, that the average speed of a heavy vehicle calculated in accordance with this Division between detection points is 120 kilometres per hour along a length of road for which the speed limit is 90 kilometres per hour. The use of the average speed of the vehicle indicates that the speed limit was exceeded by 30 kilometres per hour.

Assume, as well, that a police officer also measured the speed of the vehicle at some point during the same journey at 130 kilometres per hour using an approved traffic enforcement device. Using the police officer's measurement, the driver was exceeding the speed limit by 40 kilometres per hour at that point.

A court in proceedings to which this Division applies may rely on evidence obtained by the police officer rather than the average speed to convict a person of the speeding offence.

- (3) For the avoidance of doubt, the validity of an immediate licence suspension notice given for a speeding offence may not be challenged or called into question in any proceedings only because the average speed that is relied on in proceedings or a penalty notice for the offence is less than a speed for which an immediate licence suspension notice may be issued.

Division 4 Approval of traffic enforcement devices

134 Approval of devices by Governor (cf STM Act, ss 44, 45, 47A, 56, 57A and 57C)

- (1) The Governor may, by order published in the Gazette, approve types of devices (or combinations of types of devices) as being designed for any one or more of the following uses:
- (a) measuring the speed at which a vehicle is travelling (whether or not the vehicle concerned is also photographed),
 - (b) photographing a vehicle that is driven in excess of a speed limit applicable to a length of road,
 - (c) photographing a vehicle at a point during its journey between different points on a road for use in calculating the vehicle's average speed between those points,
 - (d) photographing a vehicle that is driven in contravention of a traffic light signal displaying a red circle or a red arrow,
 - (e) photographing a vehicle that is driven in a traffic lane on a road.
- Note.** The Governor may amend, rescind, revoke or repeal an order made under this section. See section 43 of the *Interpretation Act 1987* and the definition of **repeal** in section 21 of that Act.
- (2) A camera device may not be approved for use under this section unless the device is capable of recording the following information on or with any photograph taken by the device:
- (a) the date on which the photograph is taken,
 - (b) the time and location at which the photograph is taken,
 - (c) the direction in which the vehicle activating the camera device is travelling (that is, towards or away from the device),
 - (d) in the case of a device that photographs a vehicle that is driven in excess of the speed limit at a particular point on a length of road:
 - (i) the speed at which the vehicle is travelling, and
 - (ii) the speed limit that applies to the length of road at which the photograph is taken,

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- (e) in the case of a device that photographs a vehicle driven in contravention of a traffic light signal:
 - (i) the lane in which the vehicle activating the camera device is travelling, and
 - (ii) the interval during which a red circle or red arrow has been continuously displayed by the traffic light signal immediately before the photograph is taken,
 - (f) in the case of a device that photographs a vehicle that is driven in a traffic lane:
 - (i) the lane in which a vehicle activating the camera device is travelling, and
 - (ii) the kind of traffic lane in which a vehicle activating the camera device is travelling,
 - (g) such other information as may be prescribed by the statutory rules (whether generally or for a specified kind of device or enforcement use).
- (3) The Minister may not recommend the making of an order by the Governor under this section approving the use of a device for measuring the speed at which a vehicle is travelling (other than an average speed) without the concurrence of the Attorney General.

Division 5 Use of evidence obtained from approved traffic enforcement devices

135 Definitions (cf STM Act, ss 47 (7), 47B (4), 57 (1) and 57B (1); VR Act, s 22C (1))

- (1) In this Division:
- appropriate inspection officer*** means:
- (a) in relation to an approved traffic enforcement device that measures the speed at which a vehicle is travelling but is not used in conjunction with, or as part of, a digital camera device:
 - (i) a police officer, or
 - (ii) a person authorised by the Commissioner of Police to test a device of that kind, or
 - (b) in relation to any other kind of approved traffic enforcement device—a person (or a person belonging to a class of persons) authorised by the Authority to install and inspect devices of the kind concerned.
- detectable traffic offence*** means any of the following kinds of offences:
- (a) a speeding offence,
 - (b) a traffic light offence,

(c) a public transport lane offence.

digital camera device means a camera device that is capable of recording photographs in the form of digitised, electronic or computer-generated images.

public transport lane offence means an offence against this Act or the statutory rules that:

- (a) involves driving a vehicle in a traffic lane on a road that is dedicated by or under this Act (whether continuously or at particular times) primarily for the use of coaches regardless of whether certain other vehicles, such as emergency vehicles, are also permitted to use the lane, and
- (b) is of a kind prescribed by the statutory rules.

traffic light offence means an offence against this Act or the statutory rules of contravening a traffic light signal displaying a red circle or a red arrow.

unauthorised vehicle use offence means any of the following offences:

- (a) an offence against section 68 (Prohibition on using unregistered registrable vehicles),
- (b) an offence against section 8 (Offence of using uninsured motor vehicle on road) of the *Motor Accidents Compensation Act 1999*,
- (c) an offence against the statutory rules involving a prohibited use of a registrable vehicle that is prescribed by the statutory rules for the purposes of this definition.

(2) For the purposes of this Act:

- (a) an approved traffic enforcement device is **approved for average speed detection** if it is approved under section 134 for the use referred to in section 134 (1) (c), and
- (b) an approved traffic enforcement device is **approved for excess speed imaging** if it is approved under section 134 for the use referred to in section 134 (1) (b), and
- (c) an approved traffic enforcement device is **approved for speed measurement** if it is approved under section 134 for the use referred to in section 134 (1) (a), and
- (d) an approved traffic enforcement device is **approved for red traffic light detection** if it is approved under section 134 for the use referred to in section 134 (1) (d), and
- (e) an approved traffic enforcement device is **approved for traffic lane use detection** if it is approved under section 134 for the use referred to in section 134 (1) (e).

136 Evidence of speed recorded by speed measurement devices (cf STM Act, s 47 (1))

Evidence may be given in proceedings for a speeding offence of a measurement of speed obtained and recorded by an approved traffic enforcement device that is approved for speed measurement.

137 Certificates concerning reliability of speed measurement devices (cf STM Act, s 46 (1))

In proceedings for a speeding offence in which evidence is given of a measurement of speed obtained from an approved traffic enforcement device that is approved for speed measurement, a certificate purporting to be signed by an appropriate inspection officer for the device certifying the following matters is admissible and is prima facie evidence of those matters:

- (a) that the device is an approved traffic enforcement device that is approved for speed measurement,
- (b) that on a day specified in the certificate (being within the period prescribed by the statutory rules before the alleged time of the offence) the device was tested in accordance with the statutory rules and sealed by an appropriate inspection officer for the device,
- (c) that on that day the device was accurate and operating properly.

138 Admissibility of photographs taken by devices—generally (cf STM Act, ss 47 (2)–(5), 47B (1) and (2), 57 (2) and (3) and 57B (2)–(4))

- (1) In proceedings for a detectable traffic offence, any one or more photographs that are tendered in evidence on any of the following bases are admissible in the proceedings:
 - (a) if the proceedings concern a speeding offence in which evidence of an average speed is relied on—photographs that are tendered as:
 - (i) being photographs taken by means of the operation, on a day or days specified on the photographs, of approved traffic enforcement devices that are approved for average speed detection installed at the locations specified on the photographs, and
 - (ii) if the photographs are taken by digital camera devices—each bearing a security indicator of a kind prescribed by the statutory rules,
 - (b) in the case of proceedings for a speeding offence in which evidence of an average speed is not relied on—a photograph that is tendered as:

- (i) being taken by an approved traffic enforcement device that is approved for excess speed imaging on a day and at a location specified on the photograph, and
 - (ii) if the photograph is taken by a digital camera device—bearing a security indicator of a kind prescribed by the statutory rules,
 - (c) in the case of proceedings for a traffic light offence—a photograph that is tendered as:
 - (i) being taken by means of the operation, on a day specified on the photograph, of an approved traffic enforcement device that is approved for red traffic light detection installed at a location specified on the photograph, and
 - (ii) if the photograph is taken by a digital camera device—bearing a security indicator of a kind prescribed by the statutory rules,
 - (d) in the case of proceedings for a public transport lane offence—a photograph or photographs that are tendered as:
 - (i) being taken by means of the operation, on a day specified on the photograph or photographs, of an approved traffic enforcement device or devices that are approved for traffic lane use detection installed at a location or locations specified on the photograph or photographs, and
 - (ii) if the photograph or photographs are taken by a digital camera device—each bearing a security indicator of a kind prescribed by the statutory rules.
- (2) If one or more photographs are tendered in evidence as referred to in subsection (1), a certificate purporting to be signed by an appropriate inspection officer in relation to the approved traffic enforcement device concerned that certifies the following matters is also to be tendered in evidence:
 - (a) that the person is an appropriate inspection officer in relation to the device,
 - (b) that on a day and at a time specified in the certificate (being within the period prescribed by the statutory rules, whether for a specified kind of device or generally, before the time recorded on the photograph or the earliest photograph as the time at which that photograph was taken), the person carried out the inspection specified in the certificate on the approved traffic enforcement device by means of which the photograph was taken,
 - (c) that on that inspection the device was found to be operating correctly.

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- (3) A single certificate may be tendered in proceedings for a public transport lane offence for the purposes of subsection (2) if more than one photograph taken by an approved traffic enforcement device is tendered in evidence, but only if:
 - (a) each photograph is of the same vehicle, and
 - (b) each photograph is taken on the same day at approximately the same time and at approximately the same location.
 - (4) If a photograph is tendered in evidence in proceedings for a speeding offence involving a vehicle in which evidence of an average speed is not relied on, a certificate referred to in section 137 concerning the accuracy and reliability of the device used to measure the speed at which the vehicle was travelling must also be tendered along with the certificate required by subsection (2) in relation to the camera device that took the photograph.
 - (5) A photograph tendered in evidence as referred to in subsection (1):
 - (a) is to be presumed to have been taken by the approved traffic enforcement device concerned unless evidence sufficient to raise doubt that it was so taken is adduced, and
 - (b) if it is tendered on the basis that it bears a security indicator—is to be presumed to bear such a security indicator unless evidence that is sufficient to raise doubt that it does so is adduced, and
 - (c) is prima facie evidence of the matters shown or recorded on the photograph.
 - (6) Evidence that a photograph tendered in evidence as referred to in subsection (1) bears a security indicator of a kind prescribed by the statutory rules is prima facie evidence that the photograph has not been altered since it was taken.

139 Admissibility of photographs taken by devices—unauthorised vehicle use offences (cf VR Act, s 22C (2)–(5))

- (1) A photograph of a vehicle:
 - (a) taken by an approved traffic enforcement device that is evidence under this Division of a detectable traffic offence, or
 - (b) taken by an approved toll camera that is evidence of a toll offence against section 250A of the *Roads Act 1993*,

may also be tendered in evidence in proceedings for an unauthorised vehicle use offence involving the same vehicle.

Note. For example, a photograph taken by an approved traffic enforcement device that is approved for red traffic light detection that is evidence of a traffic light offence against section 138 (1) (c) may also be tendered in evidence in proceedings for an unauthorised vehicle use offence involving the same vehicle.

- (2) For this purpose, the provisions of this Division or section 250A of the *Roads Act 1993* that apply in relation to the tendering, admission and use in evidence of a photograph for the detectable traffic offence or toll offence of which the photograph is also evidence are taken to extend to the tendering, admission and use in evidence of the photograph for the unauthorised vehicle use offence.

Note. For example, a photograph of a vehicle taken by an approved traffic enforcement device that is approved for excess speed imaging may be tendered in evidence in proceedings for an unauthorised vehicle use offence by complying with the requirements of this Division concerning the tendering, admission and use in evidence of a photograph to prove a speeding offence.

- (3) Nothing in this section prevents a photograph taken by an approved traffic enforcement device being tendered and used in evidence both in proceedings for an unauthorised vehicle use offence and proceedings for a detectable traffic offence or toll offence.
- (4) In this section:
approved toll camera and *toll offence* have the same meanings as in section 250A of the *Roads Act 1993*.

140 Evidence of accuracy and reliability not required if certificate tendered

(cf STM Act, ss 46 (2), 47 (6), 47B (3), 57 (4) and 57B (5))

If a certificate under this Division is tendered in proceedings for a detectable traffic offence, evidence:

- (a) of the accuracy or reliability of the approved traffic enforcement device concerned, or
- (b) as to whether or not the device operated correctly or operates correctly (generally or at a particular time or date or during a particular period),

is not required in those proceedings unless evidence sufficient to raise doubt that, at the time of the alleged offence, the device was accurate, reliable and operating correctly is adduced.

141 Rebuttal of evidence concerning operation of approved traffic enforcement devices (cf STM Act, s 73A)

- (1) This section applies to the determination of whether evidence is sufficient to rebut prima facie evidence or a presumption, or to raise doubt about a matter, as referred to in section 137, 138, 140 or 164 and for the purposes of proceedings to which those sections apply.
- (2) An assertion that contradicts or challenges:
- (a) the accuracy or reliability, or the correct or proper operation, of an approved traffic enforcement device, or

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- (b) the accuracy or reliability of information (including a photograph) derived from such a device, is capable of being sufficient, in proceedings to which this section applies, to rebut such evidence or such a presumption, or to raise such doubt, only if it is evidence adduced from a person who has relevant specialised knowledge (based wholly or substantially on the person's training, study or experience).

Part 5.4 Vehicle use and traffic safety

Division 1 Dangers and obstructions to traffic

142 Removal of dangers and obstructions to traffic (cf STM Act, s 75)

- (1) If a danger or obstruction to traffic on a road is caused by:
- (a) a vehicle that has been involved in an accident or has broken down, or
 - (b) any thing that has fallen, escaped or been removed from a vehicle, or
 - (c) any container used for transporting materials or refuse (including a building skip),
- an appropriate officer may remove the vehicle, thing or container and take such other steps as may be necessary to protect the public and facilitate the free flow of traffic.
- (2) The appropriate roads authority may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the relevant person the expenses that the appropriate roads authority has incurred in exercising the functions conferred by this section.
- (3) A certificate that is issued on behalf of the appropriate roads authority by a person prescribed by the statutory rules, or by a person belonging to a class of persons so prescribed, being a certificate that states that:
- (a) a specified amount represents the costs incurred by the authority in carrying out specified work or in taking specified action for the purposes of this section, or
 - (b) a specified amount represents the costs incurred by the authority in relation to the exercise by an appropriate officer of a function under this section,
- is admissible in any such proceedings and is prima facie evidence of the fact or facts so stated.

- (4) A person must not, without reasonable excuse:
- (a) fail to comply with any direction given to the person by an appropriate officer in exercising a function under subsection (1), or
 - (b) obstruct a person who is authorised to remove a vehicle in accordance with this section.

Maximum penalty: 20 penalty units.

- (5) In this section:

appropriate officer means:

- (a) an employee in the service of the appropriate roads authority authorised by that authority to exercise the powers conferred by this section, or
- (b) a police officer, or
- (c) a person of a class prescribed by the statutory rules who is authorised by the appropriate roads authority to exercise the functions of an appropriate officer under this section.

appropriate roads authority means:

- (a) in relation to any road within a local government area—the council of that area, and
- (b) in relation to a classified road (within the meaning of the *Roads Act 1993*)—the Authority, and
- (c) in relation to that part of a road used for the passage of light rail vehicles or as an access to light rail vehicles—Transport for NSW and the operator of the light rail system.

relevant person means:

- (a) in relation to a vehicle—the person who had custody of the vehicle at the time of the accident or breakdown, or
- (b) in relation to any thing that has fallen, escaped or been removed from a vehicle—the person who had custody of the vehicle at the time of the fall, escape or removal, or
- (c) in relation to a container—the person who had custody of the container at the time it was placed in such a way as to cause danger or an obstruction to traffic.

143 Removal of unattended motor vehicles or trailers from certain places (cf STM Act, s 76)

- (1) **Removal of vehicle endangering public or causing traffic congestion**

An appropriate officer may cause an unattended motor vehicle or trailer unlawfully standing on a prescribed place to be removed in accordance with this section if, in the opinion of the officer, the vehicle is causing,

or unless removed is likely to cause, danger to the public or undue traffic congestion.

(2) **Removal of vehicle obstructing light rail vehicle**

An appropriate officer may cause an unattended motor vehicle or trailer unlawfully standing on any place to be removed in accordance with this section if, in the opinion of the officer, it is obstructing the passage of a light rail vehicle.

(3) **Removal of vehicle in accordance with this section**

A motor vehicle or trailer is removed in accordance with this section if it is removed to a nearby place at which, in the opinion of the appropriate officer concerned, the vehicle may lawfully stand without being likely to cause danger to the public or undue traffic congestion, or an obstruction to the passage of a light rail vehicle.

(4) **Payment of prescribed tow-away charge may be required**

If a motor vehicle or trailer:

- (a) is removed in accordance with this section, or
- (b) is attached to a tow truck for the purpose of being removed under this section,

the Authority may require the responsible person for the vehicle or the person who left it unattended to pay to the Authority the prescribed tow-away charge within a time specified by the Authority.

(5) The responsible person for a vehicle is not required to pay the prescribed tow-away charge if the responsible person:

- (a) satisfies the Authority that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
- (b) supplies by statutory declaration to the Authority the name and address of the person (not being the responsible person) who was in charge of the vehicle at all relevant times, or
- (c) satisfies the Authority that the responsible person did not know and could not with reasonable diligence have ascertained such name and address.

(6) A person must pay the prescribed tow-away charge within the time specified by the Authority.

Maximum penalty: 10 penalty units.

(7) A statutory declaration under subsection (5) (b), if produced in any proceedings against the person named in the declaration and in respect of the offence of failure to pay the prescribed tow-away charge, is admissible and is prima facie evidence that the person left the vehicle unattended on the prescribed place.

(8) For the purposes of subsection (5) (a), the responsible person cannot rely on any police report stating that the vehicle was stolen or illegally taken or used at the relevant time unless the report indicates the time and date that it was made.

(9) **Establishment of special tow-away areas**

The Authority may establish special tow-away areas for the purposes of this section.

(10) Any such area may be established by order published in the Gazette, or by the erection of signs in or about the area concerned, or both.

Note. Any such order may be amended, rescinded, revoked or repealed. See section 43 of the *Interpretation Act 1987* and the definition of **repeal** in section 21 of that Act.

(11) If the Authority establishes a special tow-away area, it is to cause a notice to be published in at least 2 newspapers circulating in the area to which the special tow-away area relates. The notice must describe or identify the special tow-away area, and specify the period for which the area concerned is to operate as a special tow-away area.

(12) **Definitions**

In this section:

appropriate officer means:

- (a) an employee in the service of the Authority authorised by the Authority to exercise the powers conferred by this section, or
- (b) a police officer, or
- (c) a person, or a person of a class, who is authorised by Transport for NSW to exercise the functions of an appropriate officer under this section, but only in respect of the removal of unattended vehicles obstructing the passage of light rail vehicles, or
- (d) a person of a class prescribed by the statutory rules who is authorised by the Authority to exercise the functions of an appropriate officer under this section.

prescribed place means:

- (a) a road (or part of a road) prescribed by the statutory rules, or
- (b) a class of road (or part of a road) prescribed by the statutory rules, or
- (c) any road that is within a special tow-away area referred to in subsection (9).

prescribed tow-away charge means a charge prescribed by the statutory rules for the purposes of this section.

144 Removal of vehicles—incidental provisions relating to towing (cf STM Act, s 76A)

- (1) If a motor vehicle or trailer is removed in accordance with this Division by a tow truck, the person operating or driving the tow truck may take such action as is reasonable or necessary to facilitate the towing of the vehicle or trailer in a manner that does the least damage to the vehicle or trailer. In taking any such action, the person is not liable for any damage to the vehicle or trailer that the person causes.

Note. For example, a tow truck driver may need to break into an unattended motor vehicle that is causing an obstruction in order to release the hand brake and avoid doing serious damage to the vehicle's transmission.

- (2) If a motor vehicle or trailer is removed in accordance with this Division by a tow truck, the person or body that authorised or caused the removal is not vicariously liable for any damage caused to the vehicle or trailer by the person operating or driving the tow truck.

Division 2 Traffic safety

145 Offences involving death, injury or damage resulting from unsafe loads (cf STM Act, s 58)

- (1) A person is guilty of an offence if:
- (a) the person knows, or ought reasonably to know, that a motor vehicle or trailer is loaded unsafely, and
 - (b) the person drives or causes or permits the motor vehicle or trailer to be driven or to stand on a road, and
 - (c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor vehicle or trailer is being so driven or stood because it is loaded unsafely.

Maximum penalty: 50 penalty units or imprisonment for 12 months or both (in the case of an individual) or 100 penalty units (in the case of a corporation).

- (2) The responsible person for a motor vehicle or trailer is guilty of an offence if:
- (a) the motor vehicle or trailer is loaded unsafely and is driven or stood on a road, and
 - (b) the person knows, or ought reasonably to know, that the motor vehicle or trailer is loaded unsafely, and
 - (c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor

vehicle or trailer is being so driven or stood because it is loaded unsafely.

Maximum penalty: 50 penalty units or imprisonment for 12 months or both (in the case of an individual) or 100 penalty units (in the case of a corporation).

- (3) A person is guilty of an offence if:
- (a) the person is a director of, or a person concerned in the management of, a corporation that is the responsible person for a motor vehicle or trailer that is loaded unsafely and is driven or stood on a road, and
 - (b) the person knows, or ought reasonably to know, that the motor vehicle or trailer is loaded unsafely, and
 - (c) death or personal injury to a person, or damage to property (other than the motor vehicle, trailer or load), occurs while the motor vehicle or trailer is being so driven or stood because it is loaded unsafely.

Maximum penalty: 50 penalty units or imprisonment for 12 months or both (in the case of an individual) or 100 penalty units (in the case of a corporation).

- (4) It is a defence to a prosecution for an offence against this section if the defendant proves to the court's satisfaction that the defendant was not in a position to prevent the motor vehicle or trailer from being driven or stood on a road while loaded unsafely.
- (5) For the purposes of this section, a motor vehicle or trailer is **loaded unsafely** if:
- (a) a load on the motor vehicle or trailer is placed in a way that makes the motor vehicle or trailer unstable or unsafe, or
 - (b) a load on the motor vehicle or trailer is not secured in such a way that it is unlikely to fall or be dislodged from the motor vehicle or trailer, or
 - (c) an appropriate method is not used to secure a load on the motor vehicle or trailer.
- (6) In proceedings for an offence against this section, it is sufficient to prove that a motor vehicle or trailer was loaded unsafely if the prosecution proves that the load on the vehicle or trailer was not placed, secured or restrained in a way that met the performance standards recommended in the *Load Restraint Guide: Guidelines and performance standards for the safe carriage of loads on road vehicles, Second Edition*, as published by the National Transport Commission in April 2004.

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- (7) In this section:
motor vehicle includes a combination consisting of a motor vehicle connected to one or more vehicles.

146 Offence of failing to stop and assist after impact causing injury (cf STM Act, s 70)

- (1) A person is guilty of an offence if:
- (a) a vehicle or horse being driven or ridden by the person on a road is involved in an impact occasioning the death of, or injury to, another person, and
 - (b) the person knows, or ought reasonably to know, that the vehicle or horse has been involved in an impact occasioning injury to another person, and
 - (c) the person fails to stop and give any assistance that may be necessary and that it is in the person's power to give.

Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (2) For the purposes of this section, the circumstances in which a vehicle is involved in *an impact occasioning the death of, or injury to, a person* include if the death or injury is occasioned through any of the following:
- (a) the vehicle overturning or leaving a road while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise),
 - (b) an impact between any object and the vehicle while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise),
 - (c) an impact between the person and the vehicle,
 - (d) the impact of the vehicle with another vehicle or an object in, on or near which the person is at the time of the impact,
 - (e) an impact with anything on, or attached to, the vehicle,
 - (f) an impact with anything that is in motion through falling from the vehicle,
 - (g) the person falling from the vehicle, or being thrown or ejected from the vehicle, while being conveyed in or on the vehicle (whether as a passenger or otherwise),
 - (h) an impact between any object (including the ground) and the person, as a consequence of the person (or any part of the person) being or protruding outside the vehicle, while the person is being conveyed in or on the vehicle (whether as a passenger or otherwise).

- (3) For the purposes of this section, a vehicle is also involved in *an impact occasioning the death of, or injury to, a person* if:
- (a) the death or injury is occasioned through the vehicle causing an impact between other vehicles or between another vehicle and any object or person or causing another vehicle to overturn or leave a road, and
 - (b) the prosecution proves that the vehicle caused the impact.
- (4) In this section:
object includes an animal, building, structure, earthwork, embankment, gutter, stormwater channel, drain, bridge, culvert, median strip, post or tree.
Note. Similar obligations are imposed on a person by section 52AB of the *Crimes Act 1900* in relation to impacts causing death or grievous bodily harm.

Division 3 Unauthorised use of vehicles

- 147 Motor vehicles or trailers not to be used without owner consent** (cf Gen Act, s 249)
- (1) A person must not use any motor vehicle or trailer without first obtaining the consent of the owner.
Maximum penalty: 20 penalty units.
 - (2) This section does not apply to a police officer in the execution of the officer's duty under the road transport legislation.
- 148 Procuring or hiring of motor vehicle or trailer by fraud or misrepresentation** (cf Gen Act, s 250)
- (1) A person must not procure the use or hire of any motor vehicle or trailer by fraud or misrepresentation.
Maximum penalty: 20 penalty units.
 - (2) A person must not aid or abet a person to procure the use or hire of any motor vehicle or trailer by fraud or misrepresentation.
Maximum penalty: 20 penalty units.

Chapter 6 Road transportation

Part 6.1 Monitoring of heavy vehicles and vehicles carrying dangerous goods

149 Definitions (cf STM Act, s 59)

(1) In this Part:

applicable motor vehicle means a motor vehicle to which this Part applies.

approved means approved by the Authority.

automatic data, in relation to a journey made by a motor vehicle, means recordings (made by mechanical or electronic means, or by both of those means, in an approved form, and to an approved degree of accuracy) of:

- (a) the lengths of time for which the vehicle is driven, and for which it is standing, during the journey, and
- (b) the speeds at which the vehicle is driven (measured continuously or at approved intervals) during the journey, and
- (c) the distance travelled during each period when the vehicle is driven during the journey,

being recordings made by a monitoring device.

manual data, in relation to a journey made by a motor vehicle, means recordings made by hand of:

- (a) the date, time and place of commencement, and of completion, of the journey, and
- (b) the times at which the vehicle is driven, and at which it is standing, during the journey, and
- (c) the name of each driver, and the times at which each driver was in charge of the vehicle, during the journey, and
- (d) the registration number of the vehicle, and
- (e) the name of each person making each of those recordings.

monitoring device means a device which, when fitted to a motor vehicle, is capable of producing automatic data for a journey made by the vehicle.

motor vehicle includes a trailer.

prescribed officer means a person who is:

- (a) employed:
 - (i) by the Authority, or

- (ii) as an inspector under the *Explosives Act 2003* or the *Work Health and Safety Act 2011*, or
 - (iii) in some other capacity prescribed by the statutory rules, and
- (b) authorised for the purposes of this Part by the statutory rules.
- vehicle movement record**, in relation to a journey made by a vehicle, means a record, in durable and graphic form, consisting of:
- (a) manual data for the journey, and
 - (b) either:
 - (i) corresponding automatic data for the journey produced by a monitoring device, except where subparagraph (ii) applies, or
 - (ii) where the automatic data is stored electronically in a monitoring device—a graphic representation, produced by an approved method, of that data.
- (2) The statutory rules may prescribe the manner in which the Authority may signify any approval for the purposes of this Part.

150 Application of this Part (cf STM Act, s 60)

- (1) This Part applies to:
 - (a) any motor vehicle (being a coach, a motor vehicle that has a GVM exceeding 13.9 tonnes or a motor vehicle and trailer combination that has a GCM exceeding 13.9 tonnes) of a class or description prescribed by the statutory rules, except in such circumstances as may be so prescribed, and
 - (b) any motor vehicle which, because it carries dangerous goods within the meaning of the *Dangerous Goods (Road and Rail Transport) Act 2008* is required by regulations under that Act, or under any code prescribed for the purposes of this paragraph by statutory rules under this Act, to have a sign exhibited on it.
- (2) This Part applies to vehicles, drivers and responsible persons for vehicles whether or not:
 - (a) the vehicles are registered in this jurisdiction, or
 - (b) the drivers hold driver licences issued in this jurisdiction, or
 - (c) the responsible persons ordinarily reside (or, being corporations, are incorporated or have their principal places of business) in this jurisdiction.

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- 151 Vehicles to be fitted with monitoring devices in working order** (cf STM Act, s 61)
- (1) An applicable motor vehicle is not to be used on any journey made wholly or partly on a road in this jurisdiction unless:
 - (a) a monitoring device is fitted to the vehicle, and
 - (b) the device is producing automatic data for the journey.
 - (2) If a vehicle is used in contravention of this section, the responsible person for the vehicle is guilty of an offence.
Maximum penalty: 50 penalty units.
- 152 Vehicle movement record to be preserved** (cf STM Act, s 62)
- (1) A vehicle movement record relating to each journey commenced, on or after the commencement of this section, by a vehicle to which this Part applies is to be preserved for a period of at least 12 months after the date of commencement of the journey.
 - (2) If this section is not complied with, the responsible person for the vehicle is guilty of an offence.
Maximum penalty: 50 penalty units.
- 153 Vehicle movement record to be carried by driver** (cf STM Act, s 63)
- (1) An applicable motor vehicle must not be used for any journey made wholly or partly on a road or roads unless a duly completed vehicle movement record is carried, in accordance with this section, by the driver of the vehicle at all times while the vehicle is in this jurisdiction during the journey.
 - (2) The record that must be carried on any day is to relate to any journey or part of a journey made by the vehicle, whether in or outside this jurisdiction, during the period of 14 days immediately preceding that day.
 - (3) If a vehicle is used in contravention of this section, the responsible person for, and the driver of, the vehicle are each guilty of an offence and are each liable to a penalty not exceeding 50 penalty units.
 - (4) It is a defence to a prosecution for an offence against this section if the defendant proves to the court's satisfaction:
 - (a) that the monitoring device fitted to the vehicle was of a type that stores automatic data electronically, and
 - (b) that the compilation of the vehicle movement record required to be carried by the driver on the date of the alleged offence would have required the production of a graphic representation of data which, on that date, was stored in the monitoring device, and

- (c) that, in the circumstances of the case, the required record could not reasonably be expected to have been compiled by that date.
- (5) Nothing in this section requires the carriage of a vehicle movement record relating to the use, before the commencement of this section, of any vehicle.

154 Inspection of monitoring devices and records carried on vehicles (cf STM Act, s 64)

- (1) A police officer may inspect any applicable motor vehicle in order to ascertain:
 - (a) whether a monitoring device is fitted to the vehicle, and
 - (b) whether any device so fitted appears to be operating correctly.
- (2) For the purposes of an inspection under subsection (1), a police officer may require the driver to operate the vehicle and to co-operate in any other manner reasonably necessary to facilitate the inspection.
- (3) A prescribed officer may:
 - (a) require the driver of an applicable motor vehicle to produce for inspection:
 - (i) the driver's licence to drive the vehicle (whether issued in this jurisdiction or elsewhere), and
 - (ii) any record required by this Part or the statutory rules to be carried by the driver of the vehicle during the journey, and
 - (iii) any record carried by the driver in connection with the business to which the journey relates, and
 - (b) make copies of, or take extracts from, any such record, and
 - (c) make reasonable inquiries of the driver concerning any entries in any such record that are made by the driver.
- (4) For the purposes of this section, any of the following persons may, by any reasonably clear signal, require the driver of any applicable motor vehicle to stop and park the vehicle:
 - (a) a police officer wearing a police uniform,
 - (b) a prescribed officer identifying himself or herself in the manner required by the statutory rules.
- (5) A police officer or a prescribed officer may require a vehicle and its driver to stay for such time as is reasonably necessary for the exercise of a power conferred on the officer by this section.
- (6) A person must not:
 - (a) obstruct or hinder a police officer or a prescribed officer in the exercise of a power conferred by this section, or

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- (b) fail to comply with a requirement made under this section.
Maximum penalty: 50 penalty units.

155 Seizure of monitoring devices and records (cf STM Act, s 65)

- (1) A police officer may disconnect and take and retain possession of a monitoring device that is fitted to an applicable motor vehicle, together with any automatic data stored in the device if:
- (a) the vehicle has been involved in an accident in which any person was killed, or
 - (b) the police officer reasonably believes that the monitoring device or any part of its mechanism has been improperly interfered with, or
 - (c) the police officer reasonably believes that the driver has committed a major offence involving the vehicle during the journey then being undertaken by the vehicle.
- (2) A police officer or a prescribed officer may take and retain possession of any record carried, pursuant to a requirement of this Part or the statutory rules, by the driver of an applicable motor vehicle if the officer reasonably believes that:
- (a) false entries have been made in the record, or
 - (b) the record is unlawfully in the possession of the driver, or
 - (c) the record does not relate to the vehicle concerned.
- (3) A police officer or a prescribed officer may take and retain possession of any document which the driver of an applicable motor vehicle represents to be a record required by this Part or the statutory rules to be carried by the driver but which the officer reasonably believes is not such a record.
- (4) A person must not obstruct or hinder a police officer or a prescribed officer in the exercise of a power conferred by this section.
Maximum penalty: 50 penalty units.

156 Production of records by responsible persons (cf STM Act, s 66)

- (1) The Authority may, by notice in writing served on any responsible person for an applicable motor vehicle, require the person to produce vehicle movement records to the Authority.
- (2) The notice may require the production of:
- (a) all vehicle movement records relating to journeys undertaken in the vehicle during the 12 months preceding the date of service of the notice, or
 - (b) such of those records as the notice specifies.

- (3) The notice is not complied with if the records are not produced at a place, and within a time, specified by the notice.
- (4) The responsible person for a vehicle must comply with a notice under this section.
Maximum penalty: 50 penalty units.
- (5) Vehicle movement records produced to the Authority, whether in compliance with a notice under this section or otherwise, may be retained by the Authority for analysis, and while they are so retained, the responsible person for the vehicle is exempted from the requirements of any further notice under this section in relation to them.
- (6) A notice under this section does not require the production of a vehicle movement record being carried by the driver of a vehicle in accordance with a requirement of this Part.

157 Tampering with monitoring devices or vehicle movement records (cf STM Act, s 67)

- (1) A person must not adjust any part of the mechanism of a monitoring device, fitted to an applicable motor vehicle, in such a manner that the accuracy of a vehicle movement record for the vehicle will be reduced.
Maximum penalty: 50 penalty units.
- (2) A person must not make any false entry in, or otherwise falsify, a vehicle movement record.
Maximum penalty: 50 penalty units.
- (3) Without limiting any power conferred on the Authority by or under this Act, the Authority may cancel the driver licence or licences of a person who commits an offence against this section.

158 Exemptions (cf STM Act, s 68)

- (1) The Authority may, in accordance with the statutory rules, exempt any person or vehicle or any class of persons or vehicles from the operation of all or any of the provisions of this Part.
- (2) An exemption:
 - (a) may be absolute or subject to conditions, and
 - (b) if subject to conditions, has effect only while the conditions are observed.

159 Evidence of vehicle movement record (cf STM Act, s 69)

- (1) A vehicle movement record is not admissible in evidence in any criminal proceedings unless:
 - (a) the proceedings are proceedings for:

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- (i) an offence against section 157, or
 - (ii) aiding, abetting, counselling or procuring the commission of an offence against that section, or
 - (iii) a major offence, or
- (b) the record is adduced by the defendant.
- (2) Nothing in this section affects the admissibility in any civil proceedings of a vehicle movement record.

Part 6.2 Speed limiting of heavy vehicles

160 Definition (cf STM Act, s 69A)

In this Part:

speed limiter compliant, in relation to a vehicle, means that the speed at which the vehicle is capable of being driven is limited, in the manner prescribed by the statutory rules for the purposes of this Part, to not more than 100 kilometres per hour.

161 Application of Part (cf STM Act, s 69B)

- (1) This Part applies to the vehicles prescribed by the statutory rules for the purposes of this Part.
- (2) This Part applies to vehicles and the drivers of, and responsible persons for, vehicles whether or not:
 - (a) the vehicles are registered in this jurisdiction, or
 - (b) the drivers hold driver licences issued in this jurisdiction, or
 - (c) the responsible persons ordinarily reside (or, being corporations, are incorporated or have their principal places of business) in this jurisdiction.

162 Vehicles to be speed limited (cf STM Act, s 69C)

- (1) The responsible person for a vehicle to which this Part applies is guilty of an offence unless the vehicle is speed limiter compliant when the vehicle is being driven on a road.
Maximum penalty: 30 penalty units (in the case of an individual) and 150 penalty units (in the case of a corporation).
- (2) In proceedings for an offence against this section, proof that the vehicle concerned was driven on a road at a speed of more than 115 kilometres per hour is admissible and is prima facie evidence that the vehicle was not speed limiter compliant at the time that it was travelling at that speed.

- (3) It is a defence to a prosecution for an offence against this section if the defendant proves:
- (a) that the vehicle was, at the time of the alleged offence, a stolen vehicle or a vehicle illegally taken or used, or
 - (b) that the vehicle is speed limiter compliant and that, at the time it was travelling at a speed of more than 115 kilometres per hour, the gradient of the length of road along which the vehicle was being driven at or immediately before that time, combined with the speed at which the vehicle was travelling on that length of road, caused it to be driven at more than 100 kilometres per hour despite the vehicle being speed limiter compliant.
- (4) In proceedings for an offence against this section, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.

163 Certificate evidence of speed limiter compliance (cf STM Act, s 69D)

- (1) In proceedings for a speed limiter offence, a certificate issued by an authorised person certifying that, at the time of certification, the manner of limiting the speed of the vehicle complied with the requirements prescribed by the statutory rules for the purposes of this Part is admissible and is prima facie evidence that the vehicle is speed limiter compliant.
- (2) In this section, *authorised person* means:
- (a) the manufacturer of a speed limiting mechanism fitted to the vehicle, or
 - (b) any other person (or person belonging to a class or description of persons) prescribed by the statutory rules.

164 Photographic evidence of speed of vehicle (cf STM Act, s 69E)

- (1) Without limiting the evidence that may be given in proceedings for a speed limiter offence, in proceedings for such an offence evidence may be given of any of the following to prove the fact that a vehicle was driven on a road at a speed of more than 115 kilometres per hour:
- (a) the measurement of speed obtained and recorded by one or more approved traffic enforcement devices that have been approved for speed measurement and excess speed imaging,
 - (b) an average speed calculated from information obtained from approved traffic enforcement devices that have been approved for average speed detection.

- (2) Division 5 of Part 5.3 applies to proceedings for a speed limiter offence in the same way as it applies to proceedings for a speeding offence (within the meaning of that Part) in which such evidence is given.

165 Liability of offender for speeding offence and evidence of speed unaffected (cf STM Act, s 69F)

Nothing in this Part:

- (a) affects the liability of a person who commits an offence against this Act or the statutory rules involving the driving of a vehicle on a road at a speed of more than 115 kilometres per hour for that offence (the *speeding offence*), or
- (b) prevents the giving of evidence of the measurement of speed obtained by the use of an approved traffic enforcement device (or of an average speed calculated from information obtained from approved traffic enforcement devices) in proceedings both for the speeding offence and for a speed limiter offence.

Chapter 7 Compliance and enforcement

Part 7.1 Authorised officers

166 Authorised officers (cf Gen Act, ss 121 and 128)

- (1) The Authority may, by instrument in writing, appoint:
 - (a) a specified person to be an authorised officer, or
 - (b) persons of a specified class to be authorised officers.
- (2) An authorised officer may but need not be a member of staff of the Authority or of a public authority.
- (3) Without limiting the above, an authorised officer as defined in a corresponding applicable road law may be appointed as an authorised officer under this section.
- (4) The Authority may exercise any power conferred by or under the road transport legislation on an authorised officer, other than a power that requires the physical presence of an authorised officer.
- (5) Accordingly, in this Act (except this Part) references to an authorised officer include references to the Authority.

167 Exercise of powers by authorised officers (cf Gen Act, s 122)

- (1) An authorised officer has the powers conferred on authorised officers by the road transport legislation.
- (2) However, the Authority may, by instrument in writing applicable to a specified authorised officer or each authorised officer of a specified class:
 - (a) provide that the officer may not exercise specified powers, or
 - (b) provide that the officer may exercise specified powers only, or
 - (c) otherwise restrict the powers that the officer may exercise, including (for example) by limiting the circumstances in which the officer may exercise any powers conferred on the officer.
- (3) In addition, the statutory rules may identify powers that may only be exercised by authorised officers, or classes of authorised officers, who are specifically empowered by the Authority under subsection (2) (b) to exercise them.

168 Identification cards (cf Gen Act, s 124)

- (1) The Authority may:
 - (a) issue an authorised officer (other than a police officer) with an identification card, or

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- (b) designate a card, issued to an authorised officer (other than a police officer) by another person, body or authority (whether or not of this jurisdiction), as an identification card for the purposes of this Act.
- (2) An identification card issued by the Authority must:
 - (a) contain a photograph of the officer, the name of the Authority and either:
 - (i) the name and signature of the officer, or
 - (ii) a unique number that has been assigned to the officer by the Authority, and
 - (b) identify the officer as an authorised officer.
 - (3) The Authority must not designate a card issued to an authorised officer by another person, body or authority as an identification card for the purposes of this Act unless the card:
 - (a) contains a photograph of the officer, the name of the other person, body or authority and either:
 - (i) the name and signature of the officer, or
 - (ii) a unique number that has been assigned to the officer by the other person, body or authority, and
 - (b) identifies in some way (however expressed) the officer as an authorised officer under another law or as having official functions under another law.

169 Production of identification (cf Gen Act, s 125)

- (1) This section applies to powers conferred on authorised officers or police officers by or under an applicable road law, but only where the physical presence of an officer at the scene is necessary for the exercise of the power.
- (2) An authorised officer (other than a police officer) must not exercise a power unless an identification card has been issued to or designated for the officer.
- (3) An authorised officer (other than a police officer) who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by producing the officer's identification card.
- (4) A police officer who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by either of the following methods (at the officer's choice):
 - (a) producing the officer's police identification,
 - (b) stating orally or in writing the officer's name and place of duty.

- (5) An officer is required to comply with a requirement under subsection (3) or (4):
 - (a) immediately, or
 - (b) if it is not practicable to comply with the requirement immediately—as soon as practicable afterwards.
- (6) An officer need only identify himself or herself once to a particular person during the course of an incident, even though more than one power is being exercised during the course of the incident.
- (7) In this section:

incident means:

 - (a) a single incident, or
 - (b) a connected series of incidents involving the same or substantially the same parties and occurring during a period of 72 hours.

power means a power under an Australian applicable road law.

request, in relation to the exercise of a power, means a request made by a person (if any) in respect of whom the power is being or is about to be exercised.

170 Return of identification cards (cf Gen Act, s 126)

- (1) A person is guilty of an offence if:
 - (a) the Authority has issued an identification card to the person, and
 - (b) the person was, but has stopped being, an authorised officer, and
 - (c) the Authority has requested the person to return the card to the Authority within a specified period, and
 - (d) the person did not return the card during the period.Maximum penalty: 20 penalty units.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) The onus of proof of reasonable excuse in proceedings for an offence against this section lies on the defendant.

171 Reciprocal powers of officers (cf Gen Act, s 127)

- (1) This section has effect in relation to another jurisdiction while the corresponding law of the other jurisdiction contains provisions corresponding to this section.
- (2) The Minister may enter into agreements with a Minister of the other jurisdiction for the purposes of this section, and may amend or revoke any such agreement.

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- (3) To the extent envisaged by such an agreement:
- (a) authorised officers (other than police officers) or police officers of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise functions conferred respectively on authorised officers or police officers of the other jurisdiction by or under the corresponding law of the other jurisdiction, and
 - (b) authorised officers or police officers of the other jurisdiction may, in this jurisdiction or the other jurisdiction, exercise functions conferred respectively on authorised officers (other than police officers) or police officers by or under this Act.
- (4) Anything done or omitted to be done by an authorised officer or police officer of this jurisdiction under subsection (3) (a) is taken to have been done under this Act as well as under the corresponding law.
- (5) The statutory rules may make provision for or with respect to the exercise of powers under this section.
- (6) Nothing in this section affects the appointment under section 166 (3) (Authorised officers) of persons as authorised officers for the purposes of this Act.

172 Amendment or revocation of directions or conditions (cf Gen Act, s 129)

- (1) An authorised officer (other than a police officer) may amend or revoke a direction given, or conditions imposed, by an authorised officer under this Act.
- (2) A police officer may amend or revoke a direction given, or conditions imposed, by a police officer under this Act.

173 Offences—obstructing, hindering or impersonating authorised officer
(cf Gen Act, ss 169 and 170)

- (1) A person must not obstruct or hinder an authorised officer in the exercise of the officer's functions under the road transport legislation.
Maximum penalty: 80 penalty units (in the case of an individual) or 400 penalty units (in the case of a corporation).
- (2) A person must not impersonate an authorised officer.
Maximum penalty: 100 penalty units (in the case of an individual) or 500 penalty units (in the case of a corporation).
- (3) An offence is not committed under subsection (1) in relation to the exercise of a function under Division 4 (Powers of inspection and search) of Part 4.2 of the *Road Transport (Vehicle and Driver Management) Act 2005* unless it is established that the function:
 - (a) was being exercised lawfully, and

- (b) without limiting paragraph (a), was:
 - (i) exercisable without consent, or
 - (ii) being exercised under the authority of a warrant.
- (4) The onus of proof of a matter set out in subsection (3) lies on the prosecution in proceedings for an offence against this section.

Part 7.2 Identity powers

174 Expanded meaning of “driver” (cf Gen Act, s 3)

- (1) A reference in this Part to the driver of a vehicle or combination includes a reference to:
 - (a) in relation to a heavy vehicle or heavy combination—a two-up driver of the vehicle or combination who is present in or near the vehicle or combination, and
 - (b) a person who is driving the vehicle or combination as a driver under instruction or under an appropriate learner licence.
- (2) In this section:
two-up driver means a person accompanying a driver of a heavy vehicle or heavy combination on a journey or part of a journey, who has been, is or will be sharing the task of driving the vehicle or combination during the journey.

175 Requirement for driver or rider to produce Australian driver licence and state name and address (cf Gen Act, s 171)

- (1) An authorised officer may, in the execution of the officer’s functions under the road transport legislation, require the driver or rider of a vehicle or horse to do any or all of the following:
 - (a) produce the driver’s relevant Australian driver licence (in the case of the driver of a motor vehicle),
 - (b) state the driver’s or rider’s name,
 - (c) state the driver’s or rider’s home address.
 - (2) A person must not:
 - (a) refuse to comply with a requirement of an authorised officer under subsection (1), or
 - (b) state a false name or home address.
- Maximum penalty: 20 penalty units.

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- (3) In subsection (1), a reference to a driver of a vehicle (in the case of a motor vehicle) includes, where the driver is the holder of a learner licence and the motor vehicle is not a motor cycle, a reference to a holder of a relevant Australian driver licence occupying the seat in or on the motor vehicle next to the driver.

176 Requirement for passenger to produce Australian driver licence and state name and address (cf Gen Act, s 172)

- (1) A person occupying the seat in or on a motor vehicle (other than a motor cycle) next to a driver who holds a learner licence must, when required to do so by an authorised officer, produce the person's relevant Australian driver licence and state the person's name and home address.
Maximum penalty: 20 penalty units.
- (2) A person accompanying another person who is attending a motor registry for the purpose of undergoing any test or examination required by the road transport legislation must, on request, produce the person's relevant Australian driver licence and state the person's name and home address if:
- (a) the request is made by an authorised officer, and
 - (b) the person making the request believes on reasonable grounds that the person accompanying the person who is to undergo the test or examination has been giving driving instruction to that person.

Maximum penalty: 20 penalty units.

- (3) In this section:
motor registry means a place at which registration of a vehicle can be effected by or on behalf of the Authority.

177 Requirement for responsible person to disclose driver identity (cf Gen Act, s 173)

- (1) If the driver of a motor vehicle is alleged to have committed an offence against the road transport legislation:
- (a) the responsible person for the vehicle, or the person having the custody of the vehicle, must, when required to do so by an authorised officer, immediately give information (which must, if so required, be given in the form of a written statement signed by the responsible person) as to the name and home address of the driver, and
 - (b) any other person must, if required to do so by an authorised officer, give any information that it is in the person's power to give and that may lead to the identification of the driver.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) (a) if the defendant proves to the court's satisfaction that the defendant did not know and could not with reasonable diligence have ascertained the driver's name and home address.
- (3) A written statement:
 - (a) purporting to be given under subsection (1) (a) and to contain particulars of the name and home address of the driver of a motor vehicle at the time of commission of an alleged offence against the road transport legislation, and
 - (b) that is produced in any court in proceedings against the person named in the statement as the driver for such an offence,is evidence without proof of signature that the person was the driver of the vehicle at the time of the alleged offence if the person does not appear before the court.
- (4) In this section:
responsible person has the same meaning as in Chapter 3 of the *Road Transport (Vehicle and Driver Management) Act 2005*.

178 Production of relevant Australian driver licence to court (cf Gen Act, s 174)

- (1) A person who is the holder of a relevant Australian driver licence and who is charged with a breach of the road transport legislation must produce the person's driver licence to the court at the hearing of the charge.
- (2) A person must not, without reasonable excuse, fail to comply with subsection (1).
Maximum penalty: 20 penalty units.

179 Unauthorised demand for production of relevant Australian driver licence (cf Gen Act, s 175)

- (1) A person must not (knowing that the person is not by law authorised to require its production) demand production by another person of that other person's relevant Australian driver licence.
Maximum penalty: 20 penalty units.
- (2) For the purposes of this section, the making of a statement that could reasonably be understood, by the person to whom the statement is made, as indicating that the person is being required to produce the person's relevant Australian driver licence is taken to be a demand for its production.

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- (3) Nothing in this section prohibits a request for production of a relevant Australian driver licence as a means of evidencing the identity or age of a person:
- (a) in connection with the supply of any goods or services, or
 - (b) in connection with the conferring of any right, title or benefit, or
 - (c) in other circumstances,
- where it is reasonable for the person making the request to require evidence of the other person's identity or age.

Part 7.3 Criminal responsibility

Division 1 Liability for offences generally

180 Multiple offenders for applicable road law offence (cf Gen Act, s 176)

- (1) This section applies where a provision of the road transport legislation provides (expressly or impliedly) that each of 2 or more persons is liable for an applicable road law offence.
- (2) Proceedings may be taken against all or any of the persons.
- (3) Proceedings may be taken against any of the persons:
 - (a) regardless of whether or not proceedings have been commenced against any of the other persons, and
 - (b) if proceedings have been commenced against any of the other persons—regardless of whether or not the proceedings have been concluded, and
 - (c) if proceedings have been concluded against any of the other persons—regardless of the outcome of the proceedings.
- (4) This section has effect subject to section 181 and to any express provisions of the road transport legislation.

181 Double jeopardy (cf Gen Act, s 177)

- (1) A person may be punished only once in relation to the same failure to comply with a particular provision of the road transport legislation, even if the person is liable in more than one capacity.
- (2) Despite subsection (1), a person may be punished for more than one breach of a requirement where the breaches relate to different parts of the same vehicle or combination.

182 Liability of directors etc for offences by corporation—accessory to commission of offences (cf Gen Act, s 178 (1))

- (1) For the purposes of this section, a *corporate offence* is an offence against the road transport legislation (other than an applicable road law offence) that is capable of being committed by a corporation.

Note. See section 178 of the *Road Transport (Vehicle and Driver Management) Act 2005* for the liability of directors, partners, employers and others for applicable road law offences by bodies corporate, partnerships, associations and employees.

- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
 - (c) the person:
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
 - (iii) conspires with others to effect the commission of the corporate offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

Division 2 Liability for camera recorded offences and parking offences

183 Definitions (cf Gen Act, s 179 (12))

(1) In this Division:

appropriate approved traffic enforcement device for a camera recorded offence means:

- (a) in the case of a public transport lane offence—an approved traffic enforcement device that is approved for traffic lane use detection, or
- (b) in the case of a traffic light offence—an approved traffic enforcement device that is approved for red traffic light detection, or
- (c) in the case of a speeding offence where the average speed of a vehicle is relied on—an approved traffic enforcement device that is approved for average speed detection, or
- (d) in the case of a speeding offence where the average speed of the vehicle is not relied on—an approved traffic enforcement device that is approved for excess speed imaging, or
- (e) in the case of an unauthorised vehicle use offence—an approved traffic enforcement device or approved toll camera (within the meaning of section 250A of the *Roads Act 1993*) that has taken a photograph which may be tendered in evidence under section 139 in proceedings for such an offence.

average speed detected offence means a speeding offence involving a heavy vehicle in respect of which the penalty notice or the court attendance notice indicates that the average speed of the vehicle was calculated from information recorded by appropriate approved traffic enforcement devices for the offence.

camera recorded offence means any of the following:

- (a) a public transport lane offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by the appropriate approved traffic enforcement device for the offence,
- (b) a traffic light offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by the appropriate approved traffic enforcement device for the offence,
- (c) an average speed detected offence,

- (d) a speeding offence (other than an average speed detected offence) in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by the appropriate approved traffic enforcement device for the offence,
- (e) a speeding offence (other than an average speed detected offence) in respect of which:
 - (i) the penalty notice or the court attendance notice indicates that the offence was detected by an approved traffic enforcement device that is approved for speed measurement, and
 - (ii) the number-plate of the vehicle concerned was recorded by a police officer using photographic or video equipment approved by the Commissioner of Police for the purposes of this paragraph,
- (f) an unauthorised vehicle use offence in respect of which the penalty notice or the court attendance notice indicates that the offence was detected by an appropriate approved traffic enforcement device for the offence.

court attendance notice means:

- (a) in relation to proceedings for an offence commenced in the Local Court—a court attendance notice within the meaning of the *Criminal Procedure Act 1986* issued in respect of the person alleged to have committed the offence, and
- (b) in relation to proceedings for an offence commenced in the Supreme Court in its summary jurisdiction—an application for an order under section 246 of the *Criminal Procedure Act 1986* in respect of the person alleged to have committed the offence.

designated offence means:

- (a) a camera recorded offence, or
- (b) a parking offence.

detection points, in relation to an average speed detected offence, has the same meaning as in Division 3 of Part 5.3.

parking offence means any offence of standing or parking a motor vehicle or trailer or of causing or permitting a motor vehicle or trailer to stand, wait or be parked in contravention of the statutory rules.

prosecutor has the same meaning as in the *Criminal Procedure Act 1986*.

relevant nomination document means:

- (a) in the case of a responsible person that is a corporation served with a penalty notice in relation to a designated offence:
 - (i) an approved nomination document under section 189 (1), or
 - (ii) a statutory declaration, or
- (b) in the case of a responsible person that is a corporation served with a court attendance notice in relation to a designated offence—a statutory declaration, or
- (c) in the case of a responsible person for a vehicle who is a natural person—a statutory declaration.

unauthorised vehicle use offence does not include an unauthorised vehicle use offence where it is alleged that the offender merely caused, permitted or otherwise allowed a vehicle to be driven or used.

- (2) Words, terms and expressions used in this Division that are defined for the purposes of Part 5.3 or Division 5 of that Part have the same meanings as in that Part or Division.

Note. See, in particular, sections 121 and 135.

184 Responsible person for vehicle taken to have committed designated offences (cf Gen Act, s 179 (1) and (1A))

(1) **Liability of responsible person for offence generally**

If a designated offence occurs in relation to any registrable vehicle, the person who at the time of the occurrence of the offence is the responsible person for the vehicle is taken to be guilty of an offence against the provision concerned in all respects as if the responsible person were the actual offender guilty of the designated offence unless:

- (a) in any case where the offence is dealt with under Division 3—the person satisfies the authorised officer under section 195 that:
 - (i) the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
 - (ii) the actual offender would have a defence to any prosecution for the designated offence brought against the offender, or
- (b) in any other case—the person proves to the satisfaction of the court hearing the proceedings for the offence that:
 - (i) the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
 - (ii) the actual offender would have a defence to any prosecution for the designated offence brought against the offender.

(2) **Maximum penalty payable by corporation taken to be guilty of certain camera recorded offences**

If a corporation is taken to be guilty of a camera recorded offence (other than an unauthorised vehicle use offence) by the operation of subsection (1), the maximum monetary penalty that a court may impose on the corporation for the offence is taken to be 5 times the maximum monetary penalty for the offence for which the actual offender (as a natural person) would be liable.

185 When responsible person not liable for parking offence (cf Gen Act, s 179 (3) and (5))

- (1) Despite section 184, the responsible person for a vehicle is not guilty of a parking offence by the operation of that section if:
- (a) in any case where such an offence is dealt with under Division 3—the responsible person:
 - (i) within 21 days after service on the responsible person of a penalty notice alleging that the responsible person has been guilty of such offence, supplies by relevant nomination document to the authorised officer under section 195 the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or
 - (ii) satisfies the authorised officer that the responsible person did not know and could not with reasonable diligence have ascertained the name and address, or
 - (b) in any other case—the responsible person:
 - (i) within 21 days after service on the responsible person of a court attendance notice in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or
 - (ii) proves to the satisfaction of the court hearing the proceedings for the offence that the responsible person did not know and could not with reasonable diligence have ascertained the name and address.

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- (2) For the purposes of subsection (1), it is presumed that a penalty notice served on a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not received by the person, or was not received by the person within the 7-day period.

186 Duty to inform if person not driver of vehicle committing camera recorded offence (cf Gen Act, s 179 (4) and (5))

- (1) A person who:
- (a) is served with a penalty notice or a court attendance notice in respect of a camera recorded offence, and
 - (b) was not the driver of the vehicle to which the offence relates at the time the offence occurred,
- must, within 21 days after service of the notice, supply by relevant nomination document to the authorised officer under section 195 (in the case of a penalty notice) or the prosecutor (in the case of a court attendance notice) the name and address of the person who was in charge of the vehicle at the time the offence occurred.
- (2) For the purposes of subsection (1), it is presumed that a penalty notice served on a person by post is served on the person 7 days after it is posted, unless the person establishes that it was not received by the person, or was not received by the person within the 7-day period.

187 When responsible person for vehicle not liable for camera recorded offence (cf Gen Act, s 179 (8))

Despite section 184, the responsible person for a vehicle who is served with a penalty notice or a court attendance notice in respect of a camera recorded offence is not guilty of that offence by operation of that section if the person:

- (a) complies with section 186 in relation to the offence, or
- (b) satisfies the authorised officer (in the case of a penalty notice) or the court (in the case of a court attendance notice) that the responsible person did not know and could not with reasonable diligence have ascertained the name and address of the person who was in charge of the vehicle at the time the offence occurred.

188 Offences relating to nominations (cf Gen Act, s 179 (6) and (7))

(1) **Offence—failure to comply with section 186**

A person must comply with section 186 unless the person satisfies:

- (a) in the case of a penalty notice—the authorised officer, or

(b) in the case of a court attendance notice—the court dealing with the camera recorded offence, or

(c) in either case—the court dealing with the offence of failing to comply with section 186,

that the person did not know and could not with reasonable diligence have ascertained that name and address.

Maximum penalty:

(a) if the offence relates to a vehicle registered otherwise than in the name of a natural person—100 penalty units, or

(b) in any other case—50 penalty units.

(2) **Offence—false nomination of person in charge of vehicle**

A person must not, in a relevant nomination document supplied under section 186, falsely nominate another person as the person who was in charge of the vehicle at the time the offence occurred.

Maximum penalty:

(a) if the offence relates to a vehicle registered otherwise than in the name of a natural person—100 penalty units, or

(b) in any other case—50 penalty units.

(3) A person falsely nominates another person as the person in charge of a vehicle for the purposes of subsection (2) if either a false name or address (or both a false name and address) for the other person is supplied in a relevant nomination document.

189 Nominations by corporations (cf Gen Act, s 179 (8A)–(8D))

(1) The Authority may approve one or more documents (*approved nomination documents*) for use by corporations when nominating other persons under this section as persons in charge of vehicles for which the corporations are the responsible persons.

(2) Without limiting subsection (1), the Authority may approve documents under that subsection:

(a) to be provided in printed or electronic form (or both), and

(b) to be used in relation to more than one designated offence involving one or more vehicles for which a corporation is the responsible person.

(3) If a corporation that is the responsible person for a vehicle supplies an approved nomination document to an authorised officer for the purpose of section 185 or 186 instead of a statutory declaration, an authorised officer may, by written notice served on the corporation (a *verification notice*), require it to supply a statutory declaration for use in court proceedings that verifies such of the nominations contained in the

approved nomination document as are specified in the verification notice.

- (4) A corporation served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).

Maximum penalty: 100 penalty units.

190 Use of statutory declarations as evidence (cf Gen Act, s 179 (7A), (7B), (9) and (10))

- (1) A statutory declaration supplied for the purposes of section 185, 186 or 189 (3) or subsection (3), if produced in any proceedings against the person named in the declaration and in respect of the designated offence concerned, is admissible and is prima facie evidence:

- (a) in the case of a statutory declaration relating to a parking offence—that the person was in charge of the vehicle at all relevant times relating to the parking offence, or
- (b) in the case of a statutory declaration relating to a camera recorded offence—that the person was the driver of the vehicle at the time the offence occurred.

- (2) A statutory declaration that relates to more than one designated offence does not constitute a statutory declaration under, or for the purposes of, section 185, 186 or 189 (3) unless each of the offences is a camera recorded offence detected by the same camera device at approximately the same time.

Note. The Authority may approve a nomination document under section 189 (1) for use by a corporation instead of a statutory declaration that relates to more than one designated offence involving one or more vehicles for which the corporation is the responsible person. See section 189 (2).

- (3) A court or authorised officer may have regard to a statutory declaration that is provided by a person in deciding, for the purposes of section 185, 187 or 188 (1), whether the person did not know and could not with reasonable diligence have ascertained the name and address of the person in charge of a vehicle.
- (4) If a statutory declaration is provided by a person under subsection (3), it must include the matters (if any) prescribed by the statutory rules.

191 Application of this Division to average speed detected offences (cf Gen Act, s 179 (10A) (a)–(c))

The following provisions apply in relation to a penalty notice or court attendance notice for an average speed detected offence involving a heavy vehicle travelling between detection points:

- (a) a reference in any other provision of this Division to the time of the occurrence of an offence is taken to be a reference to the period during which the heavy vehicle travelled between the detection points,
- (b) the actual offender for the purposes of this Division is taken to be each driver of the heavy vehicle between the detection points,
- (c) any obligation under this Division of the responsible person for the heavy vehicle to supply the name and address of the person who was in charge of the vehicle at the time the offence occurred is taken to be an obligation to provide the names and addresses of each of the persons who were in charge of the heavy vehicle between the detection points.

Note. Division 3 of Part 5.3 allows the average speed of a heavy vehicle calculated from the time taken to travel between different detection points to be used as evidence of the actual speed at which the vehicle travelled. Section 129 (1) (b) (when read with section 129 (2)) provides that if there is more than one driver of the vehicle between the detection points, each driver is taken to have driven the heavy vehicle at the average speed of the vehicle except for any particular driver who can establish any exculpatory ground prescribed by the statutory rules.

192 Further identity information from nomination information provider (cf Gen Act, s 179 (10B)–(10D) and (12))

- (1) An authorised officer or prosecutor to whom a relevant nomination document is supplied for the purpose of section 185 or 186 may, by written notice served on the nomination information provider, require the provider to do one or both of the following:
 - (a) provide such relevant identity information that is in the provider's power to provide (including, if so required, by means of a written statement signed by the provider), as may be specified in the notice, within the period specified in the notice,
 - (b) appear before the authorised officer or prosecutor at a specified time and place and provide (either orally or in writing) such relevant identity information that is in the provider's power to provide as may be specified in the notice.
- (2) The period or time specified in a notice under subsection (1) for information to be provided, or an appearance to be made, must be no earlier than 7 days after the date of service of the notice.

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- (3) A person served with a notice under subsection (1) must not, without lawful or reasonable excuse, refuse or fail to comply with the notice.
Maximum penalty: 20 penalty units.

- (4) In this section:
nomination information provider, in relation to a relevant nomination document, means:
- (a) in the case of a document supplied by a responsible person for the vehicle concerned who is a natural person—the person who supplies the document, or
 - (b) in the case of a document supplied by a responsible person for the vehicle concerned that is a corporation—a person who prepares or supplies the document on behalf of the corporation.

relevant identity information means any information that may assist in confirming or establishing the identity of the person driving or in charge of a vehicle when a designated offence to which a relevant nomination document relates was committed.

193 Liability of actual offender unaffected (cf Gen Act, s 179 (2) and (10A) (d))

- (1) Nothing in this Division affects the liability of the actual offender.
- (2) However, if a penalty has been imposed on or recovered from any person in relation to any designated offence, no further penalty may be imposed on or recovered from any other person in relation to the offence.
- (3) Subsection (2) does not operate to prevent a penalty being imposed on or recovered from each of the drivers of a heavy vehicle between the detection points for an average speed detected offence.

194 Division does not derogate from any other law (cf Gen Act, s 179 (11))

The provisions of this Division are in addition to, and not in derogation of, any other provisions of this or any other Act.

Division 3 Penalty notices

195 Penalty notices for certain offences (cf Gen Act, s 183)

- (1) A police officer or other authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed any of the following offences:
 - (a) an offence against a provision of the road transport legislation (including an offence by virtue of the operation of Division 2) that is prescribed by the statutory rules as a penalty notice offence,

- (b) an offence against the *Driving Instructors Act 1992* or any regulation made under that Act that is prescribed by the statutory rules as a penalty notice offence,
 - (c) an offence against section 650 (1) or (4) of the *Local Government Act 1993* (including an offence by virtue of the operation of section 651 of that Act),
 - (d) an offence against the *Motor Accidents Compensation Act 1999* or the regulations made under that Act that is prescribed by the statutory rules as a penalty notice offence,
 - (e) an offence against the *Passenger Transport Act 1990* or any regulation made under that Act that is prescribed by the statutory rules as a penalty notice offence,
 - (f) an offence against the *Recreation Vehicles Act 1983* or any regulation made under that Act that is prescribed by the statutory rules as a penalty notice offence,
 - (g) an offence against the *Roads Act 1993* or any regulation made under that Act (including an offence by virtue of the operation of section 244 of that Act) that is prescribed by the statutory rules as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the statutory rules for the offence if dealt with under this section.
- (3) The statutory rules may:
- (a) prescribe an offence for the purposes of this section:
 - (i) by specifying the offence, or
 - (ii) by referring to the provision creating the offence, or
 - (iii) by providing that all offences against a specified Act, Chapter of an Act, Part of an Act, or Division of an Act, a Schedule to an Act, or under specified statutory rules (being an Act, a Chapter, a Part or a Division, a Schedule or statutory rules referred to in subsection (1)) are prescribed as penalty notice offences, or
 - (iv) by providing that all offences against any such Act, Chapter, Part, Division, Schedule or statutory rules (other than such of those offences as are specified in the statutory rules) are prescribed as penalty notice offences, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and

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- (c) prescribe different amounts of penalties for different offences or classes of offences, and
 - (d) prescribe different amounts of penalties for the same kind of offence or class of offence committed in specified circumstances, and
 - (e) prescribe different authorised officers or classes of authorised officer as authorised officers with respect to the issuing of penalty notices for specified offences or classes of offences (and, for this purpose, may prescribe persons or classes of persons to be authorised officers for the purposes of paragraph (c) of the definition of *authorised officer* in section 4 (1) in connection with the issuing of such penalty notices).
- (4) An offence in respect of which a penalty of imprisonment may be imposed under the road transport legislation (except an offence against section 53 (3)) or the *Motor Accidents Act 1988* cannot be prescribed by the statutory rules as a penalty notice offence.
 - (5) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.

196 Service of penalty notices (cf Gen Act, s 184)

- (1) A penalty notice may be served personally or by post.
- (2) A penalty notice that relates to an offence of which the responsible person for a vehicle is guilty by virtue of Division 2 or the owner is guilty by virtue of section 651 of the *Local Government Act 1993* may:
 - (a) be served personally or by post, or
 - (b) be addressed to the responsible person or owner without naming the responsible person for the vehicle or owner or stating the person's or owner's address and may be served by leaving it on or attaching it to the vehicle.

197 Payment of penalty notices (cf Gen Act, s 185)

- (1) If the amount of penalty prescribed for an alleged offence is paid under this Division, no person is liable to any further proceedings for the alleged offence.
- (2) Subsection (1) does not affect any power of the Authority under section 226.
- (3) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

198 Application of Fines Act 1996 to penalty notices under this Division

A penalty notice under this Division is declared to be a penalty notice for the purposes of the *Fines Act 1996*.

199 Effect of Division on other kinds of proceedings (cf Gen Act, s 186)

This Division does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

Division 4 Proceedings for offences

200 Proceedings for offences (cf Gen Act, s 180)

- (1) Proceedings for an offence against the road transport legislation are to be dealt with summarily before the Local Court or the Supreme Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by the Local Court for an offence against a provision of the road transport legislation is:
 - (a) in the case of an offence against Chapter 3 of the *Road Transport (Vehicle and Driver Management) Act 2005* or the heavy vehicle driver fatigue/speeding compliance provisions—500 penalty units or the maximum monetary penalty provided for the offence (whichever is less), or
 - (b) in any other case—100 penalty units or the maximum monetary penalty provided for the offence (whichever is less).

201 Period within which proceedings for operator onus offences may be commenced (cf Gen Act, s 181)

- (1) Despite any other Act, proceedings for an operator onus offence may be commenced within one year after the date of the alleged commission of the offence.
- (2) In this section:
operator onus offence means:
 - (a) a designated offence within the meaning of Division 2, or
 - (b) an offence against section 188 (2).

202 Period within which proceedings for certain mass, dimension and load offences may be commenced (cf Gen Act, s 182)

- (1) This section applies to applicable road law offences, other than:
 - (a) any offence prescribed by the statutory rules for the purposes of this section, and

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- (b) any offence in respect of which proceedings may only be commenced within a period of less than 2 years after the alleged commission of the offence.
 - (2) Despite any other Act, proceedings for an applicable road law offence to which this section applies may be commenced within:
 - (a) the period of 2 years after the commission of the alleged offence, or
 - (b) a further period of 1 year commencing on the day on which the Authority or an authorised officer first obtained evidence of the commission of the alleged offence considered reasonably sufficient by the Authority or officer to warrant commencing proceedings.
 - (3) For the purposes of subsection (2), a certificate purporting to have been issued by the Authority or an authorised officer as to the date when the Authority or an officer first obtained evidence considered reasonably sufficient by the Authority or officer to warrant commencing proceedings is admissible in any proceedings and is prima facie evidence of the matters stated.

203 Section 10 of Crimes (Sentencing Procedure) Act 1999 not applicable in certain circumstances (cf Gen Act, s 187 (6))

- (1) Section 10 of the *Crimes (Sentencing Procedure) Act 1999* does not apply if a person is charged before a court with an applicable offence if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge, that section is or has been applied to or in respect of the person in respect of a charge for another applicable offence (whether of the same or a different kind).
- (2) Each of the following is an ***applicable offence*** for the purposes of subsection (1):
 - (a) an offence against section 110, 111, 112 (1), 118 or 146 or clause 16 (1) (b), 17 or 18 of Schedule 3,
 - (b) an offence against section 117 (1) of driving negligently (being driving occasioning death or grievous bodily harm),
 - (c) an offence against section 117 (2) of driving a motor vehicle on a road furiously or recklessly or at a speed or in a manner which is dangerous to the public,
 - (d) an offence against section 52AB of the *Crimes Act 1900*,
 - (e) an offence against an applicable road law that involves a severe risk breach of a mass, dimension or load restraint requirement within the meaning of Part 3.3 of the *Road Transport (Vehicle and Driver Management) Act 2005*,

- (f) an offence against the heavy vehicle driver fatigue/speeding compliance provisions,
- (g) an offence against a provision of an Act or statutory rule that is a former corresponding provision in relation to a provision referred to in paragraph (a), (b), (c), (d), (e) or (f),
- (h) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in paragraph (a), (b), (c), (d), (e), (f) or (g).

Part 7.4 Sanctions concerning licences

Division 1 Licence disqualification

204 Court may disqualify driver on conviction (cf Gen Act, s 187 (1)–(5) and (7))

(1) **Court may order disqualification for offences against road transport legislation**

Subject to any mandatory disqualification provision, a court that convicts a person of an offence against the road transport legislation may, at the time of the conviction, order the disqualification of the person from holding a driver licence for such period as the court specifies.

(2) If the court makes an order disqualifying the person, the person is disqualified from holding a driver licence for the period specified by the court.

(3) Any disqualification under this section is in addition to any penalty imposed for the offence.

(4) **Imposition of speed inhibitor conditions**

The statutory rules may:

- (a) provide that any driver licence held by a person (or class of persons) who has been convicted of the offence of driving a motor vehicle on a road at a speed which is dangerous to the public under this Act or of any other prescribed speeding offence is subject to a speed inhibitor condition, and
- (b) provide a penalty for any breach of any such condition, and
- (c) prescribe any matter necessary or convenient to be prescribed in relation to devices referred to in the definition of *speed inhibitor condition* in subsection (6).

(5) **Particulars of disqualifications to be forwarded to Authority**

The court is to cause particulars of each conviction or order under the road transport legislation to be forwarded to the Authority.

(6) **Definitions**

In this section:

mandatory disqualification provision means any of the following:

- (a) section 53,
- (b) section 54,
- (c) section 115,
- (d) section 205.

road transport legislation does not include the following:

- (a) the *Motor Vehicles Taxation Act 1988* or the regulations made under that Act,
- (b) Schedule 2 or statutory rules made for the purposes of that Schedule.

speed inhibitor condition means a condition limiting a driver licence to the driving of a motor vehicle to which is affixed a sealed device that prevents the engine from propelling the vehicle at a speed in excess of 60 kilometres per hour.

205 Disqualification for certain major offences (cf Gen Act, s 188)

(1) **Definitions**

In this section:

automatic disqualification means a disqualification under this section from holding a driver licence without specific order of a court.

convicted person means a person who is convicted of a major offence.

conviction means the conviction in respect of which a person is a convicted person.

ordered disqualification means disqualification under this section from holding a driver licence that is ordered by a court.

(2) **Disqualification if no previous major offence**

If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is not or has not been convicted of any other major offence (whether of the same or a different kind):

- (a) where the conviction is for an offence against section 110 (1), (2) or (3) or 111 (1) or (3):

- (i) the person is automatically disqualified for 6 months from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 3 months) of disqualification—the person is disqualified from holding a driver licence for such shorter period as may be specified in the order, or
 - (b) where the conviction is for an offence against section 110 (4) or 112 (1):
 - (i) the person is automatically disqualified for 12 months from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
 - (c) where the conviction is for an offence against clause 17 (1) or 18 of Schedule 3:
 - (i) the person is automatically disqualified for 3 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
 - (d) where the conviction is for any other offence:
 - (i) the person is automatically disqualified for a period of 3 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order.
- (3) **Disqualification if previous major offence**
- If, at the time of the conviction of the convicted person or during the period of 5 years before the conviction (whether that period commenced before or commences after the commencement of this section), the convicted person is or has been convicted of one or more other major offences (whether of the same or a different kind):
- (a) where the conviction is for an offence against section 110 (1), (2) or (3) or 111 (1) or (3):

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- (i) the person is automatically disqualified for 12 months from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 6 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
 - (b) where the conviction is for an offence against section 110 (4) or 112 (1):
 - (i) the person is automatically disqualified for 3 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
 - (c) where the conviction is for an offence against clause 17 (1) or 18 of Schedule 3:
 - (i) the person is automatically disqualified for 5 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 12 months) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order, or
 - (d) where the conviction is for any other offence:
 - (i) the person is automatically disqualified for 5 years from holding a driver licence, or
 - (ii) if the court that convicts the person thinks fit to order a shorter period (but not shorter than 2 years) or longer period of disqualification—the person is disqualified from holding a driver licence for such period as may be specified in the order.
- (4) **Calculation of disqualification periods in case of multiple offences**
- If 2 or more convictions of a person are made, whether or not at the same time, for crimes or offences arising out of a single incident involving the use of a motor vehicle or trailer, the following provisions apply:
- (a) for the purpose of ascertaining which of subsections (2) and (3) should apply in relation to any such conviction:
 - (i) the other of those convictions are to be disregarded, and

- (ii) subsection (2) or (3) (as the case may require) is, accordingly, to be the applicable subsection,
- (b) the maximum period of automatic disqualification in respect of all those crimes or offences is to be:
 - (i) if subsection (2) is applicable—3 years, or
 - (ii) if subsection (3) is applicable—5 years,
- (c) any minimum period of ordered disqualification is, in respect of those crimes or offences, to be disregarded to the extent that the total period of ordered and (where relevant) automatic disqualification would exceed:
 - (i) where subsection (2) is applicable—12 months, or
 - (ii) where subsection (3) is applicable—2 years.

However, nothing in paragraph (c) prevents the court, if it thinks fit, from making any order it could have made if that paragraph had not been enacted.

(5) **Disqualification in addition to any other penalty**

Any disqualification under this section is in addition to any penalty imposed for the offence.

(6) **Relationship to Division 2**

This section has effect subject to the provisions of Division 2.

206 Bringing forward of consecutive disqualification periods to avoid orphan periods (cf Gen Act, s 188A)

- (1) This section applies to a licence disqualification (an *orphan licence disqualification*) imposed on a person if:
 - (a) the licence disqualification is to be completed consecutively with another licence disqualification (the *primary licence disqualification*) for the person, and
 - (b) the primary licence disqualification ends prematurely because it is annulled, quashed or set aside, or is varied to shorten its period, before the date for its completion (whether or not the disqualification has already commenced), and
 - (c) the premature ending of the primary licence disqualification results in a period (the *disqualification orphan period*) during which the person would, but for this section, not be disqualified from holding a driver licence before the consecutive licence disqualification commences.

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- (2) An orphan licence disqualification is taken by operation of this section (and without the need for a further order of a court):
- (a) to commence at the beginning of what would otherwise have been the disqualification orphan period, and
 - (b) to be completed after the expiry of a period that is equivalent in length to the period that the licence disqualification would have been in force if it had commenced and ended as intended.

Note. Section 54 (2) provides that the driver of a motor vehicle who drives the vehicle during a period of licence disqualification the commencement and completion dates of which have been altered by operation of this section is not guilty of driving while disqualified unless the Authority has previously given written notice of the altered dates to the driver. However, the operation of this section in other contexts (such as when a person seeks to apply for a driver licence) is not affected.

- (3) If the operation of this section in bringing forward the commencement of an orphan licence disqualification would result in:
- (a) any other licence disqualifications intended to be completed consecutively with any different licence disqualifications (whether or not the orphan licence disqualification) not having effect consecutively, or
 - (b) any other licence disqualifications intended to be wholly or partly completed concurrently with any different licence disqualifications (whether or not the orphan licence disqualification) not having effect concurrently,
- the commencement and completion dates for each of those other licence disqualifications are also brought forward by operation of this section (and without the need for a further order of a court) to the extent necessary to ensure that they continue to have effect consecutively or concurrently, as the case may be.
- (4) If the primary licence disqualification is reinstated by a court (whether on appeal or otherwise) after this section operates to bring forward the commencement of the orphan licence disqualification, the balance of the reinstated primary licence disqualification remaining to be completed is, unless the court orders otherwise, to be completed:
- (a) if only the commencement of the orphan licence disqualification is brought forward by operation of this section—immediately after the completion of that disqualification, or
 - (b) if the commencement of more than one consecutive licence disqualification is brought forward by operation of this section—immediately after the last of the consecutive licence disqualifications is completed.

- (5) For the purposes of this section, a licence disqualification is consecutive with another licence disqualification if it is to commence:
 - (a) when the other licence disqualification is completed, or
 - (b) on a date that coincides with the anticipated date for the completion of the other licence disqualification.
- (6) Nothing in this section limits any power that a court has:
 - (a) to make an order for licence disqualification (whether or not to be completed concurrently or consecutively with any other licence disqualification), or
 - (b) to annul, quash, set aside or vary a licence disqualification.
- (7) This section has effect despite anything to the contrary in:
 - (a) the road transport legislation or any other Act or statutory rule, and
 - (b) any order of a court that imposes a licence disqualification (or a period for a licence disqualification) to which this section applies.
- (8) In this section:

licence disqualification means the disqualification of a person under the road transport legislation from holding a driver licence as a consequence of the person being convicted of an offence by a court (whether or not the disqualification is imposed by an order of a court).

207 Effect of disqualification (cf Gen Act, s 189)

- (1) If, as a consequence of being convicted of an offence by a court, a person is disqualified under the road transport legislation (whether or not by an order of the court) from holding a driver licence, the disqualification operates to cancel, permanently, any driver licence held by the person at the time of the person's disqualification.
- (2) A disqualification to hold an Australian driver licence held under a law in force in another State or internal Territory by a person who holds a driver licence issued in this State is, for the purposes of subsection (1), to be treated as if it were a disqualification to hold the driver licence issued in this State.
- (3) A person who is so disqualified must:
 - (a) if present at the court (being a court in this State) and in possession of the person's driver licence—surrender the licence to the court immediately after being convicted, or
 - (b) if present at the court (being a court in this State) but not in possession of the licence or if not present at the court—surrender

the licence to the Authority as soon as practicable after being convicted, or

- (c) if the person is to be treated under subsection (2) as having been disqualified from holding a driver licence issued in this State—surrender the licence to the Authority as soon as practicable after being disqualified from holding the Australian driver licence referred to in that subsection.

Maximum penalty: 20 penalty units.

- (4) Subject to the provisions of Division 2, a person who is disqualified from holding a driver licence cannot obtain another driver licence during the period of disqualification.
- (5) If a driver licence is surrendered to the court, the licence is to be delivered to the Authority.
- (6) Any period for which a stay of execution is in force under section 63 of the *Crimes (Appeal and Review) Act 2001* is not to be taken into account when calculating the length of a period of disqualification under this Division.

Division 2 Use of interlock devices as alternative to disqualification

208 Definitions (cf Gen Act, s 190)

In this Division:

alcohol-related major offence means any of the following offences:

- (a) an offence against section 110 (1),
- (b) an offence against section 110 (2) (a) or (b),
- (c) an offence against section 110 (3) (a) or (b),
- (d) an offence against section 110 (4) (a) or (b),
- (e) an offence against section 110 (5) (a) or (b),
- (f) an offence against section 112 (1) (a) or (b) where the offence involved driving under the influence of alcohol,
- (g) an offence against clause 16 (1) (b) of Schedule 3,
- (h) any other offence that, at the time it was committed, was an alcohol-related major offence for the purposes of this Division or a former corresponding provision to this Division.

disqualification compliance period, in relation to a person, means the disqualification compliance period applying to the person under section 211 (a).

disqualification period, in relation to a person, means the disqualification period applying to the person for the purposes of section 210.

disqualification suspension order, in relation to a person, means an order made under section 210 that, subject to certain conditions, may operate to suspend a disqualification under section 205 of the person from holding a driver licence.

interlock driver licence means a conditional licence that restricts the holder of the licence to driving a motor vehicle fitted with an approved interlock device (within the meaning of Part 3.3).

interlock participation period, in relation to a person, means the period during which the person must participate in an interlock program for the purposes of a disqualification suspension order.

209 Division does not apply to habitual traffic offenders (cf Gen Act, s 191)

This Division does not apply in respect of a person convicted of an alcohol-related major offence who is declared to be an habitual traffic offender by operation of section 217 (whether or not as a result of the conviction).

210 Disqualification period may be suspended for participation in interlock program (cf Gen Act, s 192)

If a court convicts a person of an alcohol-related major offence and the person is disqualified from holding a driver licence by or under section 205 (2) or (3) for a period (the *disqualification period*), the court may order that the disqualification of the person be suspended if the person participates in an interlock program for:

- (a) the minimum interlock participation period specified in column 2 of the Table to this section set out opposite the category of offender specified in column 1 of that Table to which the person belongs, or
- (b) such greater interlock participation period as the court may order.

Table

Column 1	Column 2	Column 3
Category of offender	Minimum interlock participation period	Disqualification compliance period
1 A person convicted of an offence against section 110 (4) (a) or (b), (5) (a) or (b) or 112 (1) (a) or (b) or clause 16 (1) (b) of Schedule 3 who, at the time of the conviction or during the period of 5 years before the conviction, is not or has not been convicted of any other alcohol-related major offence (whether of the same or a different kind).	24 months	6 months
2 A person convicted of an offence against section 110 (5) (a) or (b) or 112 (1) (a) or (b) or clause 16 (1) (b) of Schedule 3 who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	48 months	12 months
3 A person convicted of an offence against section 110 (4) (a) or (b) who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	24 months	6 months
4 A person convicted of an offence against section 110 (1), (2) (a) or (b) or (3) (a) or (b) who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	12 months	3 months

211 When person may participate in interlock program (cf Gen Act s 193)

A person in respect of whom a disqualification suspension order is made is entitled to participate in an interlock program only if:

- (a) the disqualification compliance period specified in column 3 of the Table to section 210 set out opposite the category of offender specified in column 1 of that Table to which the person belongs has expired, and
- (b) the person is issued with an interlock driver licence by the Authority under this Act.

212 Entitlement to apply for interlock driver licence (cf Gen Act, s 194)

- (1) A convicted person in respect of whom a disqualification suspension order is made is entitled to apply for an interlock driver licence despite the convicted person's disqualification:
 - (a) if the application is made before the expiry of the disqualification compliance period applicable to the person—no earlier than 28 days before the expiry of that period, or
 - (b) at any time after the expiry of the disqualification compliance period but before the expiry of the disqualification period.
- (2) However, nothing in this Division confers a right on a person in respect of whom a disqualification suspension order is made to be issued with an interlock driver licence.

213 When disqualification suspension order has effect (cf Gen Act, s 195)

(1) **When order operates to suspend disqualification**

A disqualification suspension order operates to suspend a disqualification while the person in respect of whom the order was made participates in an interlock program.

(2) **Early termination of order**

A disqualification suspension order ceases to have effect before the expiry of the interlock participation period if the person ceases to participate in an interlock program.

(3) **Effect of early termination of order**

If a disqualification suspension order ceases to have effect before the expiry of the interlock participation period, the person to whom the order relates is disqualified from holding a driver licence for the period equal to the difference between:

- (a) the disqualification period originally applicable to the person, and

- (b) the period of disqualification that had already been completed immediately before the disqualification suspension order operated to suspend the original disqualification.

(4) **Effect of suspension of interlock driver licence on order**

If the interlock driver licence of a person in respect of whom a disqualification suspension order is made is suspended during the interlock participation period:

- (a) the order does not cease to have effect only because the driver licence is suspended, and
- (b) the period of suspension is to be added to the interlock participation period applicable to the person for the purposes of determining when the interlock participation period expires.

214 Participation in an interlock program (cf Gen Act, s 196)

(1) **Commencement of participation in interlock program and interlock participation period**

A person in respect of whom a disqualification suspension order is made commences to participate in an interlock program on the date on which the person is issued with an interlock driver licence. The interlock participation period applicable to the person also commences on that date.

(2) **Early cessation of participation**

A person in respect of whom a disqualification suspension order is made ceases to participate in an interlock program if and when:

- (a) the person is convicted by a court of a major offence during the interlock participation period and the court does not order that the disqualification suspension order continue in effect despite the conviction, or
- (b) the person ceases to hold an interlock driver licence before the expiry of the interlock participation period (whether by reason of cancellation of the licence or otherwise).

215 Effect of successful participation in interlock program (cf Gen Act, s 197)

If a disqualification suspension order does not cease to have effect before the expiry of the interlock participation period:

- (a) the order ceases to have effect on the expiry of that period, and
- (b) the disqualification period in respect of which the order was originally made is taken to have expired on the expiry of the interlock participation period.

Division 3 Habitual traffic offenders

216 Meaning of “relevant offence” (cf Gen Act, s 198)

- (1) In this Division, a *relevant offence* means:
- (a) any of the following offences of which a person has been convicted by a court in this jurisdiction:
 - (i) a major offence,
 - (ii) a prescribed speeding offence (or an offence that, at the time it was committed, was a prescribed speeding offence for the purposes of this Act or the *Road Transport (General) Act 2005*),
 - (iii) an offence against section 53 (3) or a former corresponding provision,
 - (iv) an offence against section 54 (1), (3) or (4) or a former corresponding provision, or
 - (b) an offence of which a person has been convicted by a court in another State or Territory that would be an offence of the kind referred to in paragraph (a) if it had been committed in this jurisdiction.
- (2) A relevant offence includes an offence of the kind referred to in subsection (1) (a) in respect of which the charge is found proven, or a person is found guilty, (but without proceeding to a conviction) under section 10 of the *Crimes (Sentencing Procedure) Act 1999* if the offence would, if it were a relevant offence, give rise to the declaration of the person under this Division as an habitual traffic offender. In that case, a reference in this Division to the conviction of the person for a relevant offence includes a reference to the making of an order with respect to the person.

217 Declaration of persons as habitual traffic offenders (cf Gen Act, s 199)

A person is, by this section, declared to be an habitual traffic offender if:

- (a) a court in this State convicts the person of a relevant offence after the commencement of this Division, and
- (b) the person has, in the period of 5 years before the conviction, also been convicted of at least 2 other relevant offences committed on different occasions.

218 Warning to be given to persons liable to be declared habitual traffic offenders (cf Gen Act, s 200)

- (1) The Authority is required to give written warnings to the holders of driver licences who are liable to be declared to be habitual traffic offenders if they are convicted of another relevant offence.

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- (2) The declaration of an habitual traffic offender is not invalid merely because of a failure to give the warning, but any such failure may be taken into account by a court when determining whether a declaration should be quashed.

219 Period of disqualification of habitual traffic offender (cf Gen Act, s 201)

- (1) If a person is declared by section 217 to be an habitual traffic offender, the person is disqualified by the declaration (and without any specific order of a court) for a period of 5 years from holding a driver licence, except as provided by this Division.
- (2) If the court that convicts the person of the offence giving rise to the declaration thinks fit, the court may order a longer period of disqualification (including disqualification for life).
- (3) If the court that convicts the person of the offence giving rise to the declaration determines that a 5-year disqualification is a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case, the court may order a shorter period of disqualification (but not shorter than 2 years).
- (4) If a court orders a shorter or longer period of disqualification, the court must state its reasons for doing so.
- (5) A declaration of an habitual traffic offender ceases to be in force when the period of disqualification imposed by the declaration is completed.
- (6) The period of any disqualification under this Division does not commence until all other disqualifications, and all other periods of licence cancellation or suspension, imposed on the person by or under this or any other Act have been completed.
- (7) Further declarations have effect under this Division even though they occur while an existing declaration is in force, and the consequent periods of disqualification do not commence until all existing disqualifications under this Division have been completed. It does not matter that some of the relevant offences giving rise to a further declaration also gave rise to an earlier declaration.
- (8) If, while an existing disqualification under this Division is in force, the person is disqualified by a court or automatically under another provision of this or any other Act, that further disqualification does not commence until all existing disqualifications under this Division have been completed.

- (9) Any period for which a stay of execution is in force under section 63 of the *Crimes (Appeal and Review) Act 2001* is not to be taken into account when calculating the length of a period of disqualification under this Division.

220 Quashing of declaration and bar against appeals (cf Gen Act, s 202)

- (1) The declaration of a person as an habitual traffic offender by section 217 may be quashed by a court that convicts the person of a relevant offence (at the time of the conviction or at a later time) if it determines that the disqualification imposed by the declaration is a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case.
- (2) If a court quashes a declaration under this section, the court must state its reasons for doing so.
- (3) However, a declaration or disqualification under this Division cannot be appealed to any court whether under this or any other Act.
- (4) For the avoidance of doubt, the quashing of a declaration under this section:
- (a) operates to set aside the disqualification imposed by the declaration on and from the day on which the court makes the order that quashes the declaration, and
 - (b) if the disqualification period has already commenced when the declaration is quashed—does not operate to invalidate or otherwise affect the operation of the disqualification in its application to the habitual traffic offender at any time before the day on which the declaration is quashed.

221 Disqualification in addition to any other penalty (cf Gen Act, s 203)

A disqualification under this Division is in addition to any penalty imposed for the offence giving rise to the declaration.

Division 4 Suspension of licences and visiting driver privileges

222 Definitions (cf Gen Act, ss 204A and 206 (1))

In this Division:

applicable learner licence has the same meaning as in Part 5.1.

applicable provisional licence has the same meaning as in Part 5.1.

authorised visiting driver means a person:

- (a) who is not the holder of a driver licence issued in this jurisdiction, and

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- (b) who, being the holder of a licence or permit issued in a place outside this jurisdiction, has the benefit of any provision of the road transport legislation conferring on the person authority to drive in this jurisdiction.

grievous bodily harm has the same meaning as in the *Crimes Act 1900*.

223 Suspension of licence by Commissioner of Police (cf Gen Act, s 204)

- (1) The Commissioner of Police may suspend a driver licence of any driver, for a period not exceeding 14 days, who:
- (a) is in the Commissioner's opinion an incompetent, reckless or careless driver, or
 - (b) is found under the influence of liquor.
- (2) The Commissioner of Police must immediately:
- (a) notify the Authority that the Commissioner has suspended the licence and the grounds for the suspension, and
 - (b) report to the Authority whether in the Commissioner's opinion a further suspension or the cancellation of the licence is warranted or is desirable in the interest of public safety.
- (3) A driver licence that is suspended under this section is to be surrendered by the holder and forwarded to the Authority with the notification of the suspension.

224 When immediate licence suspension notice may be issued by police officer (cf Gen Act, ss 205 (1)–(2), (4) and (7) and 206 (1)–(2B), (4) and (5))

- (1) A police officer may give a driver a suspension notice (an *immediate licence suspension notice*) in any of the following circumstances:
- (a) if the driver is charged by a police officer (whether or not the same police officer) with an offence involving the death of, or grievous bodily harm to, another person caused by the use of a motor vehicle, being an offence that comprises:
 - (i) the crime of murder or manslaughter, or
 - (ii) an offence against section 33, 35 (2), 52A or 54 of the *Crimes Act 1900*,
 - (b) if the driver is charged by the police officer or another police officer with offence against section 110 (4) or (5), 115 or 116 (2) or clause 16 (1) (b), 17 (2) or 18 (1) (a), (b) or (e) of Schedule 3,
 - (c) if it appears to a police officer (whether or not the same police officer) that the driver has committed an offence against this Act or the statutory rules (other than a camera recorded offence within the meaning of Division 2 of Part 7.3) of:

- (i) exceeding a speed limit prescribed under this Act by more than 45 kilometres per hour, or
 - (ii) exceeding a speed limit prescribed under this Act by more than 30 kilometres per hour but not more than 45 kilometres per hour, as the holder of an applicable learner licence or applicable provisional licence for the class of vehicle being driven,
 - (d) if it appears to a police officer (whether or not the same police officer) that the driver has committed an offence against the statutory rules of being the holder of an applicable learner licence driving unaccompanied by a supervising driver.
- (2) An immediate licence suspension notice may be given to a driver at any time within 48 hours of:
- (a) the driver being served with a penalty notice for the offence concerned, or
 - (b) the driver being charged with the offence concerned.
- (3) An immediate licence suspension notice for the purposes of this section is a notice in a form approved by the Authority that informs that driver of the following:
- (a) the relevant suspension information for the driver concerned that is referred to in subsection (4),
 - (b) the driver's right of appeal under Part 7.8.
- (4) The *relevant suspension information* for an immediate licence suspension notice for a driver is as follows:
- (a) if the driver holds a driver licence issued in this jurisdiction and is charged with an offence referred to in subsection (1) (a), (b), (c) or (d)—a statement to the effect that any driver licence held by the driver is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn),
 - (b) if the driver is an authorised visiting driver and is charged with an offence referred to in subsection (1) (a), (b), (c) or (d)—a statement to the effect that the driver's authority to drive in this jurisdiction is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until the charge is heard and determined by a court (or until the charge is withdrawn),
 - (c) if the driver holds a driver licence issued in this jurisdiction and is served with a penalty notice for an offence referred to in subsection (1) (c) or (d)—a statement to the effect that any driver

licence held by the person is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:

- (i) a period of 6 months (in the case of an offence referred to in subsection (1) (c) (i)) or 3 months (in the case of an offence referred to in subsection (1) (c) (ii) or (d)) elapses after the date on which the offence is alleged to have been committed,
 - (ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,
 - (iii) a decision is made not to enforce the penalty notice,
- (d) if the driver is an authorised visiting driver and is served with a penalty notice for an offence referred to in subsection (1) (c) or (d)—a statement to the effect that the driver’s authority to drive in this jurisdiction is suspended from a date specified in the notice, or (if the notice so specifies) immediately on receipt of the notice, until whichever of the following happens first:
- (i) a period of 6 months (in the case of an offence referred to in subsection (1) (c) (i)) or 3 months (in the case of an offence referred to in subsection (1) (c) (ii) or (d)) elapses after the date on which the offence is alleged to have been committed,
 - (ii) if the driver elects to have the matter determined by a court in accordance with Part 3 of the *Fines Act 1996*—the matter is heard and determined by a court or a decision is made not to take or continue proceedings against the person,
 - (iii) a decision is made not to enforce the penalty notice.
- (5) Particulars of each immediate licence suspension notice given under this section are to be forwarded to the Authority immediately after the notice is given.
- (6) For the purposes of this section:
- (a) a person is charged with an offence when particulars of the offence are notified in writing to the person by a police officer, and
 - (b) a charge is withdrawn when the person charged is notified in writing of that fact by a police officer or when it is withdrawn before the court, and

- (c) a charge is determined by a court when the offence is proved or the court attendance notice is dismissed, and
- (d) a decision is made not to take or continue proceedings against a person when the person is notified in writing of that fact by a police officer or the proceedings are discharged by the court, and
- (e) a decision is made not to enforce a penalty notice in relation to a person when the person is notified in writing of that fact by:
 - (i) a police officer, or
 - (ii) an appropriate officer for the penalty notice within the meaning of Part 3 of the *Fines Act 1996*, or
 - (iii) a member of staff of the State Debt Recovery Office.

225 Effect of immediate licence suspension notice (cf Gen Act, ss 205 (3), (5) and (6) and 206 (3))

- (1) If an immediate licence suspension notice is given to a driver:
 - (a) in the case of a driver who holds a driver licence issued in this jurisdiction—any driver licence held by the driver in this jurisdiction is suspended in accordance with the terms of the notice, or
 - (b) in the case of a driver who is an authorised visiting driver—any authority of the driver to drive in this jurisdiction is suspended in accordance with the terms of the notice.
- (2) If a person who holds a driver licence issued in this jurisdiction is given an immediate licence suspension notice, the person must surrender the person's driver licence in compliance with the notice.
Maximum penalty: 20 penalty units.
- (3) If, on the determination by a court of the charge for the offence for which the notice was given, the person is disqualified from holding or obtaining a licence for a specified time:
 - (a) the court must take into account the period of suspension under this Division when deciding whether to make any order under section 205, and
 - (b) to the extent (if any) that the court so orders, a suspension under this Division may be regarded as satisfying all or part of any mandatory minimum period of disqualification required by that section to be imposed when the charge is proved.

Division 5 Downgrading of licences

226 Downgrading of driver licences (cf Gen Act, s 207)

- (1) If a driver licence is cancelled as a special measure and the offence or offences (or alleged offence or offences) that gave rise to the cancellation arose wholly or mainly out of the use of a motor vehicle or trailer of a class prescribed for the purposes of this section, the Authority may issue the former licensee with another driver licence in substitution for the cancelled driver licence that does not authorise the driving of motor vehicles or trailers of that class.
- (2) For the purposes of this section, a driver licence is cancelled as a special measure if it is cancelled by:
 - (a) the operation of the road transport legislation as a result of the imposition on the licensee of a period of disqualification from holding a driver licence, or
 - (b) the Authority under this Act because of:
 - (i) the licensee's driving record of offences or alleged offences, or
 - (ii) an alleged speeding offence referred to in section 59.
- (3) The statutory rules may make provision for or with respect to the exercise by the Authority of its power under this section.
- (4) Nothing in this section:
 - (a) limits any discretion of the Authority under the road transport legislation to decline to issue a driver licence to a person or cancel a driver licence, or
 - (b) permits the issue of any driver licence to a person who for the time being is disqualified from holding one.

Part 7.5 Compensation orders

227 Court may order compensation for damages and other losses (cf Gen Act, s 208)

A court that convicts a person of an offence against the road transport legislation may order any person to pay such an amount as compensation for loss of time or expense incurred in consequence of the offence of which the defendant was convicted as the court thinks fit.

228 Compensation for loss of time (cf Gen Act, s 209)

- (1) If proceedings are commenced by any person (other than a police officer or the Authority) for any offence against the road transport legislation and the proceedings are dismissed or withdrawn, the court

concerned may, if it thinks fit, order that the person bringing the proceedings pay to the defendant, in addition to any costs, such compensation for loss of time or otherwise as seems reasonable.

- (2) Subsection (1) extends to a court hearing an appeal in any such proceedings.

229 Compensation orders for damage to road infrastructure (cf Gen Act, s 210)

- (1) A court that finds a person guilty of an applicable road law offence may make an order (a *roads compensation order*) requiring the offender to pay a roads authority such amount by way of compensation as the court thinks fit for damage to any road infrastructure that the roads authority has incurred or is likely to incur in consequence of the offence.
- (2) A roads compensation order may be made on the application of the prosecutor, the roads authority or the Authority.
- (3) A roads compensation order may only be made in favour of a roads authority.
- (4) The court may make a roads compensation order where it is satisfied on the balance of probabilities that the commission of the offence caused or contributed to the damage.
- (5) The court may make a roads compensation order when it finds the offender guilty of the offence or at any time afterwards, but not later than the period within which a prosecution for the offence could have been commenced.

230 Assessment of compensation (cf Gen Act, s 211)

- (1) In making a roads compensation order, the court may assess the amount of compensation in the manner it considers appropriate, including (for example) the estimated cost of remedying the damage.
- (2) In assessing the amount of compensation, the court may take into account the matters it considers relevant, including:
- (a) any evidence adduced in connection with the prosecution of the offence, and
 - (b) any evidence not adduced in connection with the prosecution of the offence but adduced in connection with the making of the proposed order, and
 - (c) any certificate of the roads authority stating that the roads authority maintains the road concerned, and
 - (d) any other certificate of the roads authority, such as a certificate:
 - (i) estimating the monetary value of all or any part of the road infrastructure or of the damage to it, or

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- (ii) estimating the cost of remedying the damage, or
 - (iii) estimating the extent of the offender's contribution to the damage.

231 Service of certificates (cf Gen Act, s 212)

- (1) If a roads authority proposes to use a certificate referred to in section 230 in proceedings, the roads authority must serve a copy of the certificate on the defendant at least 28 working days before the day on which the matter is set down for hearing.
- (2) Any such certificate cannot be used in the proceedings unless a copy of the certificate has been served in accordance with this section.
- (3) A defendant who wishes to challenge a statement in any such certificate must serve a notice in writing on the roads authority at least 14 working days before the day on which the matter is set down for hearing.
- (4) The notice of intention must specify the matters in the certificate that are intended to be challenged.
- (5) If the defendant is intending to challenge the accuracy of any measurement, analysis or reading in the certificate, the defendant must specify the reason why the defendant alleges that it is inaccurate and must specify the measurement, analysis or reading that the defendant considers to be correct.
- (6) The defendant cannot challenge any matter in the certificate if the requirements of this section have not been complied with in relation to the certificate, unless the court gives leave to do so in the interests of justice.

232 Limits on amount of compensation (cf Gen Act, s 213)

- (1) If, in making a roads compensation order, the court is satisfied that the commission of the offence concerned contributed to the damage but that other factors not connected with the commission of the offence also contributed to the damage, the court must limit the amount of the compensation payable by the offender to the amount it assesses as being the offender's contribution to the damage.
- (2) The maximum amount of compensation cannot exceed the monetary jurisdictional limit of the court in civil proceedings.
- (3) The court may not include in the roads compensation order any amount for:
 - (a) personal injury or death, or
 - (b) loss of income (whether sustained by a roads authority or any other person or organisation), or

- (c) damage to any property (including a vehicle) that is not part of the road infrastructure.

233 Costs (cf Gen Act, s 214)

The court has the same power to award costs in relation to the proceedings for a compensation order under this Part as it has in relation to civil proceedings, and the relevant provisions of laws applying to costs in relation to civil proceedings apply with any necessary adaptations to costs in relation to the proceedings for the compensation order.

234 Enforcement of compensation order and costs (cf Gen Act, s 215)

A compensation order under this Part, and any award of costs, are enforceable as if they were a judgment of the court in civil proceedings.

235 Relationship with orders or awards of other courts and tribunals (cf Gen Act, s 216)

- (1) A compensation order under this Part may not be made if another court or tribunal has awarded compensatory damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, and if a court purports to make an order under this Part in those circumstances:
 - (a) the order is void to the extent that it covers the same matters as those covered by the other award, and
 - (b) any payments made under the order to the extent to which it is void must be repaid by the roads authority.
- (2) The making of a compensation order under this Part does not prevent another court or tribunal from afterwards awarding damages or compensation in civil proceedings in respect of the damage based on the same or similar facts, but the court or tribunal must take the order into account when awarding damages or compensation.
- (3) Nothing in this Part affects or limits any liability to pay costs under section 102 of the *Roads Act 1993*, except as provided by this section.

Part 7.6 Sanctions concerning vehicles

Division 1 General

236 Object and effect of Part (cf Gen Act, s 217)

- (1) This Part provides for the imposition of certain sanctions in addition to any other penalties that may be imposed by or under the road transport legislation with respect to sanctionable offences.

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- (2) Nothing in this Part affects any discretion or power that a court or person has apart from this Part in respect of any sanctionable or other offence.

237 Definitions (cf Gen Act, s 217A)

- (1) In this Part:

camera recorded offence means a speeding offence that was recorded by an approved traffic enforcement device that is approved for excess speed imaging or average speed detection.

crash test means a test to measure the effect of the impact of a motor vehicle that collides with another vehicle or other object, or a pedestrian, that is conducted by a person or body designated by the Authority.

designated speed limit, in relation to a driver on a length of road, means:

- (a) except as provided by paragraph (b)—the speed limit applicable to the driver on the length of road (including a length of road in a school zone) under this Act, or
- (b) if the speed limit applicable to the driver on the length of road (not being a length of road in a school zone) under this Act is determined by a variable illuminated message device or other speed limit sign indicating a speed limit lower than that normally applicable to the road—the speed limit that would normally be applicable to the driver on the length of road under this Act.

high range speed offence means an offence (not being a camera recorded offence) of driving a vehicle at a speed more than 45 kilometres per hour over the designated speed limit applying to the driver for the length of road at the time the offence is committed.

number-plate means a number-plate issued by the Authority and includes a special number-plate within the meaning of section 66.

number-plate confiscation notice means a notice in a form approved by the Commissioner of Police containing the information prescribed by the statutory rules for the purposes of this definition.

number-plate confiscation period, in relation to a motor vehicle, means the period during which the vehicle is prohibited from being operated on a road by a number-plate confiscation notice.

offending operator means a person who, at the time of an offence or alleged offence in connection with which a motor vehicle was or is being used, was or is both the driver, and a registered operator, of the motor vehicle.

production notice in relation to a motor vehicle or number-plates—see section 239 (1).

registered interest, in relation to a motor vehicle, means a security interest in the vehicle with respect to which a financing statement (within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth) has been registered under that Act.

sanctionable offence means any of the following:

- (a) a high range speed offence,
- (b) an offence against section 115 or 116 (2),
- (c) an offence against section 51B (Police pursuits) of the *Crimes Act 1900*,
- (d) any other offence prescribed by the statutory rules.

school zone has the meaning that it has in the road rules prescribed under this Act.

(2) In this Part:

working day, in relation to the impoundment of a motor vehicle, or the delivery or confiscation of number-plates, means a day that is not:

- (a) a Saturday or Sunday, or
- (b) a public holiday or a bank holiday in the place at which the motor vehicle was impounded, or the number-plates were confiscated or required to be delivered under this Part.

(3) For the purposes of this Part:

- (a) a reference to an offence against a provision of this Part (however expressed) includes a reference to an offence in respect of which the charge is found proven, or a person is found guilty, (but without proceeding to a conviction) under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, and
- (b) section 9 (Determination of “first offence” and “second or subsequent offence”) is taken to apply to the provisions of this Part as if that section extended to findings referred to in paragraph (a) as well as to convictions for offences.

Division 2 Additional sanctions for certain offences

238 When additional sanctions may be imposed (cf Gen Act, s 218)

A police officer may impose any one or more of the sanctions set out in section 239 if the police officer reasonably believes that a motor vehicle:

- (a) is being or has (on that day or during the past 10 days) been operated on a road by an offending operator of the vehicle so as to commit a sanctionable offence, or

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- (b) is being or has (on that day or during the past 10 days) been operated on a road by a driver (whether or not an offending operator of the motor vehicle) during a number-plate confiscation period, or
 - (c) is being or has (on that day or during the past 10 days) been operated on a road by an offending operator of the vehicle who has committed an offence against section 243 (Failure to comply with production notice), or
 - (d) is being operated on a road by a person who has been charged with an offence against section 244 (Number-plate and other offences), or
 - (e) is the subject of forfeiture under section 245.

239 Sanctions that may be imposed (cf Gen Act, s 218A)

- (1) The police officer may do any one or more of the following:
 - (a) seize and take charge of the motor vehicle and cause it to be moved to a place determined by the Commissioner of Police,
 - (b) immediately, or as soon as practicable afterwards, give or send the offending operator a notice (a ***motor vehicle production notice***) requiring the offending operator to move or cause the vehicle to be moved to, or to produce or cause to be produced to a police officer at, a place specified in the notice no later than on the date and time specified in the notice (the ***motor vehicle production date***),
 - (c) remove and confiscate the number-plates affixed to the motor vehicle and attach a number-plate confiscation notice to the motor vehicle,
 - (d) immediately or as soon as practicable afterwards:
 - (i) give the offending operator a notice (a ***number-plate production notice***) requiring the offending operator to remove or cause to be removed the number-plates affixed to the vehicle and produce them to a police officer at a place specified in the notice no later than on the date and time specified in the notice (the ***number-plate production date***), and
 - (ii) attach a number-plate confiscation notice to the motor vehicle,
 - (e) as soon as practicable afterwards, send to the offending operator at the garage address of the motor vehicle:
 - (i) a notice (a ***number-plate production notice***) requiring the offending operator to remove or cause to be removed the number-plates affixed to the vehicle and produce them to

a police officer at a place specified in the notice no later than on the date and time specified in the notice (the ***number-plate production date***), and

- (ii) a number-plate confiscation notice.
- (2) An offending operator who is sent a number-plate confiscation notice under subsection (1) (e) must attach the number-plate confiscation notice to the motor vehicle in the manner described on the notice no later than on the number-plate production date.
Maximum penalty: 30 penalty units.
- (3) Except as provided by this Part, a motor vehicle to which a number-plate confiscation notice is attached under:
- (a) subsection (1) (c) is prohibited from being operated on any road during the period of 3 months commencing on the day the notice is attached to the vehicle, and
 - (b) subsection (1) (d) or (e) is prohibited from being operated on any road during the period of 3 months commencing from the number-plate production date.

Note. See section 244 with respect to number-plate offences.

240 Production notices (cf Gen Act, s 218B)

- (1) The date specified in a motor vehicle production notice or number-plate production notice for production of a motor vehicle or number-plates, respectively, must be a date that is no later than the first working day occurring 5 days after the notice is given.
- (2) A production notice may be given personally or by post and must state the ground on which it is being given.
- (3) The disposal of a motor vehicle within the period of 5 days after a production notice is given in relation to the motor vehicle does not affect the requirement to produce the motor vehicle or number-plates in accordance with the notice, except as provided by subsection (4).
- (4) A production notice ceases to have effect in relation to a motor vehicle or number-plates if it is withdrawn by the Commissioner of Police by notice in writing given to:
 - (a) the offending operator concerned, or
 - (b) a person who purchased the motor vehicle after the production notice was given who satisfies the Commissioner of Police that the purchase was made in good faith for value and without notice, at the time of the purchase, of the production notice.

Note. It is an offence against section 244 (4) to operate a motor vehicle to which a number-plate confiscation notice is attached when the vehicle is not the subject of such a notice.

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- (5) On being given notice of the withdrawal of a production notice under subsection (4), the offending operator or purchaser concerned must remove any number-plate confiscation notice attached to the motor vehicle before the motor vehicle is operated on any road.

241 Powers and duties relating to seizure of motor vehicles and removal of number-plates (cf Gen Act, s 218C)

- (1) A motor vehicle may be seized, or number-plates confiscated from a motor vehicle, under section 239 on:
- (a) a road or public place, or
 - (b) any other place, with the consent of the owner or occupier of the place or under the authority of a search warrant issued under section 255.
- (2) For the purpose of exercising the powers conferred by section 239 (1) (a) or (c), a police officer may:
- (a) cause any locking device or other feature of the motor vehicle concerned that is impeding the seizure and movement of the motor vehicle to be removed, dismantled or neutralised and may, if the driver or any other person will not surrender the keys to the vehicle, start the vehicle by other means, and
 - (b) use or cause to be used such equipment and force as is necessary to remove number-plates and remove or disable any device or thing impeding the removal of the number-plates.
- (3) A motor vehicle may be moved under section 239 (1) (a):
- (a) by being driven, whether or not under power, or by its being towed or pushed, or in any other manner, and
 - (b) by one or more police officers or, at the direction of a police officer by persons engaged by the Commissioner of Police, and may be impounded at premises under the control of the Commissioner of Police or of another authority or person.
- (4) A police officer is to deliver, or cause to be delivered, number-plates that are confiscated under section 239 to the Authority as soon as practicable (but no later than 5 working days after they are confiscated).
- (5) A motor vehicle to which a number-plate confiscation notice is attached under section 239 (1) (c) may:
- (a) be moved by its being driven, whether or not under power, or by its being towed or pushed, or in any other manner, to the nearest place at which, in the opinion of the police officer concerned, it may lawfully stand at that time, and
 - (b) be towed (at the expense of the registered operator) to its normal garage address.

- (6) If a motor vehicle is moved in accordance with this section by a tow truck, the person operating or driving the tow truck may take such action as is reasonable or necessary to facilitate the towing of the vehicle in a manner that does the least damage to the vehicle. In taking any such action, the person is not liable for any damage to the vehicle that the person causes.

Note. For example, a tow truck driver may need to break into an unattended motor vehicle that is causing an obstruction in order to release the hand brake and avoid doing serious damage to the vehicle's transmission.

- (7) The registered operator of a motor vehicle that has had its number-plates removed is responsible for the safe and legal parking of the vehicle, any fees for removal or towing and any other costs and financial loss incurred (including any parking fines and any fees for the issue of any number-plate to replace a number-plate damaged when removed under this section).

242 Removal, impounding and production of vehicle (cf Gen Act, s 218D)

- (1) Any motor vehicle moved to, or produced at, a place in accordance with section 239 may, subject to the statutory rules, be impounded by the Commissioner of Police at that place or may be moved to and impounded at any other place determined by the Commissioner.
- (2) A certificate in writing given by a police officer as to the fact and cost of any such movement is evidence of those matters.

243 Failure to comply with production notice (cf Gen Act, s 218E)

- (1) A driver who is a registered operator of a motor vehicle is guilty of an offence if:
- (a) the driver is given a motor vehicle production notice in relation to the motor vehicle, and
 - (b) without reasonable excuse, the driver fails to move the motor vehicle to or produce it at, or cause it to be moved to or produced at, the place, on the date and within the time period, specified in the notice.

Maximum penalty: 30 penalty units.

- (2) A driver who is a registered operator of a motor vehicle is guilty of an offence if:
- (a) the driver is given a number-plate production notice in relation to number-plates affixed to the vehicle, and
 - (b) without reasonable excuse, the driver fails to remove or cause to be removed the number-plates and produce or cause them to be

produced at the place, on the date and within the time period, specified in the notice.

Maximum penalty: 30 penalty units.

- (3) The Authority may suspend the registration of a registrable vehicle for a period not exceeding 3 months if the registered operator of the vehicle:
- (a) is found guilty of an offence against this section, or
 - (b) pays the whole or part of the amount specified in a penalty notice issued in respect of an offence against this section, or in any process subsequent to such a penalty notice, as the amount that is payable in order to dispose of the alleged offence without having it dealt with by a court, or
 - (c) has not paid the amount so specified, has not elected to have the matter dealt with by a court and the time for electing to have the matter so dealt with has elapsed.

Note. Under this section, the Authority may suspend the registration of a vehicle even if the court does not proceed to conviction after finding the driver or registered operator guilty and makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

- (4) Any suspension under subsection (3) is in addition to any penalty imposed by a court or prescribed by the statutory rules under section 195 for the offence.
- (5) A motor vehicle used by an offending operator who has committed a second or subsequent offence against this section is, by the finding of guilt by the court, forfeited to the Crown unless already forfeited under section 245 or the court otherwise directs under section 246 (Commutation of forfeiture).

Note. A forfeited motor vehicle may be crash tested—see section 252 (6).

244 Number-plate and other offences (cf Gen Act, s 218F)

- (1) A person must not, without lawful excuse, operate a motor vehicle on a road during a number-plate confiscation period applying to the motor vehicle.

Maximum penalty: 30 penalty units.

- (2) A person must not, without lawful excuse, remove, tamper with or modify a number-plate confiscation notice attached to a motor vehicle during a number-plate confiscation period applying to the motor vehicle.

Maximum penalty: 30 penalty units.

- (3) A person must not, without lawful excuse, operate a motor vehicle on a road during a number-plate confiscation period applying to the motor vehicle while any of the following is affixed to the vehicle:
- (a) a number-plate issued (whether or not in respect of the registration of that particular vehicle) under a law in force in this or another jurisdiction,
 - (b) an altered number-plate issued under such a law,
 - (c) a number-plate likely to be mistaken for, or resembling, such a number-plate.
- Maximum penalty: 30 penalty units.
- (4) A person must not operate a motor vehicle on a road with a number-plate confiscation notice, or thing resembling such a notice, attached to the vehicle when the vehicle is not the subject of such a notice.
- Maximum penalty: 20 penalty units.
- (5) A registered operator of a registrable vehicle (other than the driver of the vehicle) used in contravention of this section is also guilty of an offence if it is proved that the operator caused, permitted, allowed or failed to take reasonable precautions to prevent, the contravention.
- Maximum penalty: 30 penalty units.
- (6) A person must not by a false statement or representation attempt to obtain the release of:
- (a) a vehicle impounded under this Part, or
 - (b) number-plates confiscated under this Part.
- Maximum penalty: 30 penalty units.
- (7) The driver of a motor vehicle is not guilty of an offence against this section if the driver did not know, and could not reasonably have known, that:
- (a) the motor vehicle was subject to a number-plate confiscation notice, or
 - (b) the number-plates were affixed to the motor vehicle in contravention of subsection (3).
- (8) The registered operator of a motor vehicle is not guilty of an offence against this section if the operator did not know, and could not reasonably have known, that:
- (a) the motor vehicle was being operated in contravention of a number-plate confiscation notice, or
 - (b) the number-plates were affixed to the motor vehicle in contravention of subsection (3).

245 Forfeiture of vehicles on finding of guilt of offending operator (cf Gen Act, s 219)

- (1) A motor vehicle used in connection with a sanctionable offence that is a second or subsequent offence by the offending operator under the provision concerned within a 5-year period is, by the finding of guilt by the court, forfeited to the Crown unless already forfeited under section 243 or the court otherwise directs under section 246.

Note. A forfeited motor vehicle may be crash tested—see section 252 (6).

- (2) A motor vehicle used in connection with an offence against section 244 (a *number-plate offence*) is, by the finding of guilt by the court, forfeited to the Crown unless already forfeited under section 243 or the court otherwise directs under section 246.

Note. A forfeited motor vehicle may be crash tested—see section 252 (6).

- (3) Any forfeiture under this section is in addition to any other penalty that may be imposed for the offence concerned, but for the purposes of any rights of appeal against a penalty so imposed by the court finding the offence to be proven, the forfeiture is taken to be, or to be part of, that penalty.

- (4) For the purposes of this section, payment of the amount specified in a penalty notice issued in respect of a sanctionable offence or a number-plate offence, or in any process issued subsequent to such a penalty notice, as the amount that is payable in order to dispose of the alleged offence without having it dealt with by a court has the same effect as a finding by a court that the offence was proven.

246 Commutation of forfeiture (cf Gen Act, s 219A)

- (1) The court that finds a person guilty of an offence referred to in section 243 (5) or 245 (1) or (2) may, at the time of making that finding, by order direct that the forfeiture that would otherwise be imposed under the provision concerned by that finding be commuted to a period of impounding, or confiscation of number-plates, specified in the order, if the court is satisfied that the forfeiture of the motor vehicle will cause extreme hardship to the offending operator or any other person.
- (2) For the purposes of subsection (1), financial loss or difficulty in carrying out employment (whether paid or unpaid) or in travelling to a place of employment or business or to any place for the purposes of education, training or study does not constitute extreme hardship.
- (3) The period for which a motor vehicle was impounded under section 242 is to be reckoned as counting towards a period of impounding imposed under this section.

- (4) A motor vehicle impounded by an order of a court under this section is to be retained by the Commissioner of Police for the time required by the order, unless it is sooner released under this Part.
- (5) Number-plates confiscated by an order of a court under this section are to be retained by the Authority for the time required by the order, unless they are sooner released under this Part.

247 Interested persons to be notified (cf Gen Act, s 220)

The offending operator is to give the holder of any registered interest in a motor vehicle notice of the imposition of any sanction in relation to the motor vehicle operated in connection with the offence concerned under section 239.

248 Retention of motor vehicle impounded or number-plates confiscated under this Part (cf Gen Act, s 221)

- (1) The Commissioner of Police is to retain a motor vehicle impounded under section 242 for the period of 3 months after its impoundment, unless it is sooner released under this Part or in accordance with the statutory rules.
- (2) The Authority is to retain number-plates confiscated under section 239 for the period of 3 months after they are confiscated, unless they are sooner released under this Part or in accordance with the statutory rules.
- (3) This section does not apply in the case of a motor vehicle impounded in the circumstances referred to in section 238 (e), except as prescribed by the statutory rules.

249 Early release of motor vehicle and number-plates on application to Local Court (cf Gen Act, s 222)

- (1) A person may apply to the Local Court for an order for the release into the person's custody of:
 - (a) a motor vehicle impounded under this Part before the end of the period of impounding imposed on the motor vehicle, or
 - (b) number-plates confiscated under this Part before the end of the number-plate confiscation period applying to the number-plates.
- (2) An order cannot provide for release on a day that is less than 5 working days after the vehicle was impounded or the number-plates were confiscated.
- (3) In determining whether to make an order under this section, the Local Court is entitled to have regard to the following:
 - (a) the safety of the public and the public interest in preventing the use of a motor vehicle that the Court considers is reasonably

likely in all the circumstances to be used for further sanctionable offences,

- (b) any alleged extreme hardship to a person other than the registered operator of the motor vehicle arising from the impoundment of the vehicle or confiscation of the number-plates.
- (4) The motor vehicle or number-plates are to be released by order of the Local Court only after the applicant has paid in full any applicable movement, towing and storage fees under section 250.
- (5) An applicant into whose custody a motor vehicle is released by an order under this section must acknowledge in writing receipt of the motor vehicle from the custody of the Commissioner of Police.
- (6) An applicant into whose custody number-plates are released by an order under this section must acknowledge in writing receipt of the number-plates from the custody of the Authority.
- (7) An applicant into whose custody number-plates are released by an order under this section must remove any number-plate confiscation notice attached to the motor vehicle before the motor vehicle is operated on any road.

250 Release of impounded vehicle and number-plates (cf Gen Act, s 223)

- (1) The statutory rules may prescribe the fees (if any) payable in respect of the movement, towage and storage of an impounded vehicle or release of number-plates and the persons responsible for payment of those fees.
- (2) It is the duty of the Commissioner of Police to endeavour to cause any impounded motor vehicle to be available for collection by a person entitled to its possession as soon as the person is entitled to it.
- (3) However, the Commissioner of Police is not required to release any motor vehicle under this section or to release any vehicle in accordance with an order of the Local Court unless all movement, towing and storage fees payable under this section in respect of the impounded vehicle have been paid in full.
- (4) An applicant to whom a motor vehicle is released under this section must in writing acknowledge receipt of the vehicle from the custody of the Commissioner of Police.
- (5) The Commissioner of Police may waive the whole or any part of the prescribed fees for movement, towage and storage of a motor vehicle.
- (6) It is the duty of the Authority to endeavour to cause any number-plates to be available for collection by a person entitled to possession of the number-plates as soon as the person is entitled to them or, if the

number-plates were damaged when removed under this Part, to issue replacement number-plates.

251 Safe keeping of motor vehicles (cf Gen Act, s 224)

The Commissioner of Police has (in the Commissioner's official capacity) a duty to take all reasonable steps to secure an impounded motor vehicle against theft or damage (otherwise than by crash testing under this Part) while impounded.

252 Disposal and crash testing of vehicles (cf Gen Act, s 225)

- (1) The Commissioner of Police may cause an impounded or forfeited motor vehicle to be offered for sale in the circumstances prescribed by the statutory rules. The sale is to be by public auction or public tender.
- (2) The motor vehicle may be disposed of otherwise than by sale if the Commissioner of Police believes on reasonable grounds that the vehicle has no monetary value or that the proceeds of the sale would be unlikely to exceed the costs of sale.
- (3) If the motor vehicle offered for sale is not sold, the Commissioner of Police may dispose of the motor vehicle otherwise than by sale.
- (4) The statutory rules may make provision for or with respect to the disposal of the proceeds of any such sale, including provisions for or with respect to entitling persons to seek to be paid any such proceeds.
- (5) At the request of Transport for NSW, the Commissioner of Police may dispose of a motor vehicle that is the subject of forfeiture under section 245 by releasing it to Transport for NSW to be used for the purposes of crash testing and any educational program for drivers of motor vehicles established by Transport for NSW.
- (6) Transport for NSW may cause any motor vehicle released to it to be used for the purposes of crash testing and any educational program for drivers of motor vehicles established by Transport for NSW.

253 Protection from liability with respect to impounding, removal of number-plates and crash testing and other matters (cf Gen Act, s 226)

No action lies against the Crown, the Minister, the Commissioner of Police, the Authority, Transport for NSW or any police officer for:

- (a) any damage to, or theft of, a motor vehicle caused by, or arising from, impounding or crash testing a motor vehicle or removing number-plates from a motor vehicle in accordance with this Part, or
- (b) failure by an offending operator to give the holder of a registered interest notice as required by section 247.

254 Failure to prosecute (cf Gen Act, s 227)

- (1) No action lies against the Crown, the Minister, the Commissioner of Police or any police officer in respect of the seizure or impounding of a motor vehicle, or the confiscation of number-plates, under this Part for an alleged offence for which no proceedings or process are taken or issued.
- (2) This section does not protect a police officer from liability in respect of the seizure or confiscation, otherwise than in good faith, of a motor vehicle or number-plates.

255 Search warrants (cf Gen Act, s 228)

- (1) A police officer may apply to an authorised warrants officer for a search warrant if the police officer has reasonable grounds for believing that there is or, within 72 hours, will be on any premises a motor vehicle that has been operated as referred to in section 238 or in relation to which number-plates have been, or are being, used in contravention of section 244.
- (2) An authorised warrants officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer named in the warrant:
 - (a) to enter the premises, and
 - (b) to search the premises for such a motor vehicle or number-plates, and
 - (c) to seize such a motor vehicle or number-plates, and otherwise deal with it, in accordance with this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

authorised warrants officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

premises has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Part 7.7 Evidential provisions

256 Application of Part (cf Gen Act, s 229)

- (1) A provision of this Part applies to the kinds of proceedings specified in the provision.

- (2) A provision of this Part that is expressed to apply to any proceedings extends to any proceedings regardless of whether the proceedings relate to a matter arising under the road transport legislation.

257 Certificate evidence (cf Gen Act, s 230)

- (1) A statement in a certificate purporting to have been issued by an Australian Authority, an Australian authorised officer or an Australian police officer that, at a specified time or during a specified period, any of the matters referred to in the Table is or was, or is or was not, the case is admissible in any proceedings and is prima facie evidence of the matters stated.

Table

Item	Matter that may be certified
1	A specified vehicle or combination was or was not a heavy vehicle or heavy combination.
2	A specified vehicle or combination was or was not of a particular class of heavy vehicle or heavy combination.
3	A specified person was or was not the registered operator of a heavy vehicle.
4	A specified person was or was not a member of or participant in an approved road transport compliance scheme.
5	A specified location was or was not, or was or was not part of, a road.
6	Without limiting item 5, a specified area was the subject of a declaration referred to in section 18 or was not the subject of a declaration under section 19, or both.
7	A specified location was or was not subject to a specified prohibition, restriction or other requirement regarding the operation or use of vehicles or specified classes of vehicles (including, for example, a temporary restriction on load limits during wet weather).
8	A specified vehicle was or was not registered in Australia.
9	A specified vehicle was or was not insured to cover third party personal injury or death either generally or during a specified period or in a specified situation or specified circumstances.

Item	Matter that may be certified
10	Any specified specifications, capabilities or legal entitlements or other information relating to a specified vehicle or combination (or a specified component of a specified vehicle or combination) were or were not recorded in an Australian Authority's records (including a register kept by the Australian Authority), or were or were not displayed on the vehicle or combination in accordance with an Australian applicable road law.
11	A specified person was or was not the holder of a relevant Australian driver licence that was of a specified class, or that was subject to specified conditions.
12	A specified person is or was disqualified from holding a relevant Australian driver licence or other authority to drive a motor vehicle and the circumstances of any such disqualification.
13	A specified person has incurred specified demerit points.
14	A specified person was or was not the holder of a relevant Australian driver licence that was of a specified class, or that was subject to specified conditions, and that authorised the person to drive a vehicle or combination or a vehicle or combination of a specified class.
15	A specified person was or was not the holder of a relevant Australian driver licence that authorised the person to drive a vehicle or combination of a specified class either generally or at a specified time or during a specified period or on a specified route or in a specified area or subject to specified conditions.
16	A specified person was or was not the holder of a permit under an Australian applicable road law to drive or operate a specified vehicle or combination or a vehicle or combination of a specified class either generally or subject to specified conditions.
17	A specified penalty, fee or charge was or was not, or is or is not, payable under the road transport legislation or an Australian applicable road law by a specified person.
18	A specified penalty notice under the road transport legislation or a specified infringement notice under an Australian applicable road law was served on a specified person in a specified way on a specified date.
19	A specified penalty notice under the road transport legislation or a specified infringement notice under an Australian applicable road law was served in relation to a specified vehicle or combination.
20	A specified penalty notice under the road transport legislation or a specified infringement notice under an Australian applicable road law has or has not been withdrawn or amended.

Item	Matter that may be certified
21	A specified penalty notice under the road transport legislation or a specified infringement notice under an Australian applicable road law has been amended in a specified way on a specified date.
22	A specified person has or has not paid an infringement penalty under an Australian applicable road law.
23	A specified person had or had not notified an Australian Authority: <ul style="list-style-type: none">(a) of any change of address or of a specified change of address, or(b) that the person suffered from any prescribed medical condition or from any specified prescribed medical condition.
24	A specified person, vehicle or combination was or was not subject to a specified registration, licence, permit, authorisation, approval, exemption or notice under the road transport legislation or an Australian applicable road law.
25	A specified registration, licence, permit, authorisation, approval, exemption or notice was or was not varied, suspended, cancelled or revoked under the road transport legislation or an Australian applicable road law.
26	A specified person, vehicle or combination had or did not have specified legal entitlements.
27	A specified document was or was not lodged, or a specified fee was or was not paid, by a specified person.
28	A specified person was or was not an authorised officer under the road transport legislation or an Australian applicable road law.
29	A specified identification card was an identification card issued or designated by an Australian Authority and was or was not current.
30	A specified authorised officer was authorised to exercise a specified power, and: <ul style="list-style-type: none">(a) was not restricted by an Australian Authority in the exercise of the power, or(b) was not restricted in a specified way in the exercise of the power.
31	A specified person or body was an Australian Authority.
32	A specified person was an approved officer under the <i>Road Transport (Vehicle and Driver Management) Act 2005</i> .

Item	Matter that may be certified
33	Specified terms and conditions were the terms and conditions on which a specified person was an approved officer under the <i>Road Transport (Vehicle and Driver Management) Act 2005</i> .
34	A specified road, or a specified part of the road, was a declared route within the meaning of Part 3.6 of the <i>Road Transport (Vehicle and Driver Management) Act 2005</i> .
35	A specified area was a declared zone within the meaning of Part 3.6 of the <i>Road Transport (Vehicle and Driver Management) Act 2005</i> .
36	A specified vehicle or combination (or specified component of a specified vehicle or combination) was weighed by or in the presence of a specified authorised officer on a specified weighbridge or weighing facility or by the use of a specified weighing device and that a specified mass was the mass of the vehicle or combination (or component).
37	Any matter in connection with the previous operation of the road transport legislation or an Australian applicable road law (within the meaning of the <i>Road Transport (General) Act 2005</i>) that could have been included in a certificate for the purposes section 230 of that Act before the repeal of that section.

- (2) Without limiting subsection (1), a statement in a certificate purporting to have been issued by an Australian Authority, an Australian authorised officer or an Australian police officer as to any matter that appears in or can be calculated from records kept or accessed by the Australian Authority or officer is admissible in any proceedings and is prima facie evidence of the matters stated.
- (3) Subsection (2) extends to any matter that appears in a towing authorisation within the meaning of the *Tow Truck Industry Act 1998*.

258 Proof of appointments and signatures unnecessary (cf Gen Act, s 231)

- (1) For the purposes of this Act, it is not necessary to prove the appointment of an office holder.
- (2) For the purposes of this Act, a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.
- (3) In this section:
office holder means:
- (a) the Chief Executive of the Authority, or
 - (b) the chief executive of any other Australian Authority, or
 - (c) the Commissioner of Police, or

- (d) the head of the police force or police service of any other jurisdiction, or
- (e) an authorised officer (other than a police officer), or
- (f) any other Australian authorised officer, or
- (g) a police officer, or
- (h) any other Australian police officer.

259 Vicarious responsibility (cf Gen Act, s 232)

- (1) If, in proceedings for an offence against the road transport legislation, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of their actual or apparent authority, and
 - (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for an offence against the road transport legislation, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of their actual or apparent authority is taken to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence against the road transport legislation, it is necessary to establish the state of mind of a person other than a body corporate (the *employer*) in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by an employee or agent of the employer within the scope of their actual or apparent authority, and
 - (b) that the employee or agent had the relevant state of mind.
- (4) For the purposes of a prosecution for an offence against the road transport legislation, conduct engaged in on behalf of a person other than a body corporate (the *employer*) by an employee or agent of the employer within the scope of their actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.

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- (5) In this section:
- director** of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction.
- state of mind** of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

260 Averments (cf Gen Act, s 233)

- (1) In proceedings for an offence against the road transport legislation, a statement or allegation in a complaint or charge made by the person bringing the proceedings that, at a specified time or during a specified period:
- (a) a specified vehicle or combination was a heavy vehicle or heavy combination, or
 - (b) a specified vehicle or combination was of a particular class of heavy vehicle or heavy combination, or
 - (c) a specified person was the registered operator of a heavy vehicle, or
 - (d) a specified person was a member of or participant in an approved road transport compliance scheme, or
 - (e) a specified location was, or was part of, a road, or
 - (f) without limiting paragraph (e), a specified area was the subject of a declaration referred to in section 18 or was not the subject of a declaration under section 19, or both, or
 - (g) a specified location was subject to a specified prohibition, restriction or other requirement regarding the operation or use of vehicles or specified classes of vehicles (including, for example, a temporary restriction on load limits during wet weather),
- is prima facie evidence of that matter.
- (2) In a prosecution for an offence against the road transport legislation, a statement or allegation in a court attendance notice made by the person bringing the proceedings that the offence was committed in a specified place, at a specified time, on a specified date or during a specified period is prima facie evidence of that matter.

261 Evidence regarding measuring and weighing (cf Gen Act, s 234)

A statement in a certificate issued by an inspector within the meaning of the *National Measurement Act 1960* of the Commonwealth, or by the holder of a servicing licence within the meaning of that Act, that on a date specified in the certificate a specified measuring device was tested

and was found to measure accurately (or accurately within specified tolerances):

- (a) is admissible in any proceedings, and
- (b) is evidence of the fact that the device measured accurately (or accurately within those tolerances) at all times within the period of 12 months after that date.

262 Evidence regarding weighing (cf Gen Act, s 235)

Evidence of a record made by:

- (a) the operator of a weighbridge or weighing facility, or
- (b) an employee of the operator of the weighbridge or weighing facility,

of the mass of a vehicle or combination (or component of a vehicle or combination) weighed at the weighbridge or facility is admissible in any proceedings and is prima facie evidence in any proceedings for an offence against the road transport legislation of the mass of the vehicle or combination (or component) at the time it was weighed.

263 Evidence regarding manufacturer's ratings (cf Gen Act, s 236)

- (1) Evidence of a written statement purporting to be made by the manufacturer of a vehicle or component of a vehicle regarding the mass rating of the vehicle or component determined by the manufacturer is admissible in any proceedings and is prima facie evidence in any proceedings for an offence against the road transport legislation:
 - (a) of the mass rating, and
 - (b) of any conditions to which the rating is subject included in the statement, and
 - (c) that the statement was made by the manufacturer of the vehicle or component.
- (2) Evidence of a written statement purporting to be made by the manufacturer of load restraint equipment designed for use on a vehicle or combination (or a component of a vehicle or combination) regarding the strength or performance rating of the equipment determined by the manufacturer is admissible in any proceedings and is prima facie evidence in any proceedings for an offence against the road transport legislation:
 - (a) of the strength or performance rating, and
 - (b) that the equipment was designed for that use, and

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- (c) of any conditions to which the rating is subject included in the statement, and
 - (d) that the statement was made by the manufacturer of the equipment.

264 Evidence not affected by nature of vehicle or combination (cf Gen Act, s 237)

Evidence obtained in relation to a vehicle or combination in consequence of the exercise of powers under this Act is not affected merely because the vehicle or combination is not a heavy vehicle or heavy combination.

265 Transport documentation and journey documentation (cf Gen Act, s 238)

- (1) Transport documentation or journey documentation is admissible in any proceedings under or for the purposes of an applicable road law within the meaning of Part 4.2 of the *Road Transport (Vehicle and Driver Management) Act 2005* and is prima facie evidence of:
 - (a) the identity and status of the parties to the transaction to which it relates, and
 - (b) the destination or intended destination of the load to which it relates.
- (2) The reference in subsection (1) to the *status* of the parties includes a reference to their status as responsible persons (within the meaning of Chapter 3 of the *Road Transport (Vehicle and Driver Management) Act 2005*) in relation to the transaction.
- (3) In this section, *journey documentation* and *transport documentation* have the same meanings as in the *Road Transport (Vehicle and Driver Management) Act 2005*.

Part 7.8 Appeals and applications to Local Court

266 Definitions (cf Gen Act, ss 241 (1) (a) and 242 (1) (a)–(c)); Gen Reg, cl 15 (1) and (5), 18 (1) and 22 (1))

- (1) In this Part:

appealable decision, in relation to a person, means any of the following decisions:

 - (a) a decision of the Commissioner of Police under section 115 refusing to grant the person an approval under that section or imposing any condition on any such approval,
 - (b) a decision of a police officer to give the person an immediate licence suspension notice,

- (c) a decision of the Authority not to grant the person an application for the issue, variation or renewal of a driver licence under the statutory rules (other than a decision to refuse the person a driver licence on the ground that the person, if already licensed, would be liable to have action taken against the person under section 36 (4)),
- (d) a decision of the Authority to give the person a notice of licence suspension or cancellation under section 40 (1) or a notice of licence ineligibility under section 41 (1),
- (e) a decision of the Authority to suspend or cancel the person's driver licence under section 59,
- (f) a decision of the Authority to refuse to grant or renew the registration of a registrable vehicle of the person,
- (g) a decision of the Authority to vary the conditions of the registration of a registrable vehicle under Chapter 4 or the statutory rules,
- (h) a decision of the Authority to suspend the registration of a registrable vehicle of the person under Chapter 4 or the statutory rules,
- (i) a decision of the Authority to cancel the registration of a registrable vehicle under this Act or the statutory rules,
- (j) a decision of the Authority not to issue an authorisation to repair under section 86 (5),
- (k) a decision of the Authority to suspend the registration of, or to crash test, a registrable vehicle under Part 7.6,
- (l) any other decision under the road transport legislation made in relation to the person, or a vehicle of the person, that belongs to a class of decisions prescribed by the statutory rules for the purposes of this definition.

original application means any of the following:

- (a) an application to the Local Court for an order under section 79 declaring a vehicle seized under that section to be forfeited to the Crown,
 - (b) an application to the Local Court for an order of the kind referred to in section 249 for the release of an impounded vehicle or confiscated number-plates,
 - (c) any other application to the Local Court for an order of a kind prescribed by the statutory rules.
- (2) A vehicle is the vehicle of a person for the purposes of the definition of **appealable decision** in subsection (1) if the person is the registered operator or the owner of the vehicle.

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- (3) The definition of *appealable decision* in subsection (1) does not include any of the following:
- (a) the suspension or cancellation of the registration of a vehicle, or the refusal to exercise a function, under Part 4 of the *Fines Act 1996*,
 - (b) such classes of decisions as may be excluded from the definition by the statutory rules.
- (4) Any statutory rules referred to in subsection (3) (b) that prescribe a class of decisions may limit the class of persons for whom a decision referred to in the subsection is an appealable decision for the purposes of this Part.

267 Appealable decisions may be appealed to Local Court (cf Gen Reg, cll 13 (2)–(5), 15 (2)–(4), 18 (5)–(7), 22 (3)–(5), 25AA, 25 (3), 28 (2), 29A (2), 29B (3) and 140 (2)–(5))

- (1) A person may appeal to the Local Court under this Part against an appealable decision made in relation to the person by another person (the *decision-maker*) by filing a notice of appeal with the Court.
- (2) Subject to section 268 (6), the notice of appeal must be filed with the Local Court:
- (a) no later than 28 days after the date on which the decision-maker notifies the person of the appealable decision, or
 - (b) within such other period as may be prescribed by the statutory rules (whether for the class of decision concerned or generally).

Note. This Act or the statutory rules may in some cases expressly provide for the manner in which a particular kind of appealable decision is to be notified to a person. See, for example, the service requirements for immediate licence suspension notices.

- (3) Subject to the rules of court of the Local Court, the notice of appeal must specify the grounds of the appeal.
- (4) The relevant registrar of the Local Court must give notice of the time and place of the hearing of any appeal under this section:
- (a) in the case of an appealable decision made by or on behalf of the Authority—to the Authority, or
 - (b) in the case of an appealable decision made by the Commissioner of Police or a police officer—to the Commissioner of Police, or
 - (c) in the case of any other appealable decision—to the decision-maker or such other person as may be prescribed by the statutory rules.
- (5) A notice given under subsection (4) is to inform the person to whom it is given of the grounds of the appeal.

- (6) The time of the hearing of an appeal under this Part must be not earlier than 28 days after the date on which the notice under subsection (4) is given.
- (7) The hearing of an appeal under this Part may proceed despite any omission or error in a notice under subsection (4), or the failure to give any such notice, if the Local Court is satisfied that the appellant and the person to whom the notice was to be given had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.

268 Determination of appeals against appealable decisions (cf Gen Act, s 242 (4) and (5); Gen Reg, cll 14 (1) and (2), 16 (1) and (2), 18 (4), 20 (1) and (4), 22 (2), 23 (1)–(3), 25 (4), 28 (3)–(4), 29A (3)–(4), 29B (3)–(4) and 140 (6))

- (1) The Local Court is to hear and determine an appeal made to the Court under this Part.
- (2) Subject to subsections (3)–(6), the Local Court may determine an appeal under this Part:
 - (a) by setting aside the decision, or
 - (b) by varying the decision, or
 - (c) by dismissing the appeal, or
 - (d) by making such other order as seems just to the Court in the circumstances.
- (3) In varying a decision in an appeal under this Part, the Local Court may exercise only such powers as the decision-maker could have exercised under the road transport legislation when making that decision.
- (4) If the decision that is appealed against was based on an offence committed (or alleged to have been committed) by the appellant under the road transport legislation or any other law, the appeal against the decision does not permit review of:
 - (a) the guilt or innocence of the appellant for the offence, or
 - (b) the imposition of a penalty or the level of a penalty imposed on the appellant for the offence.

Note. The effect of this provision is that, for example, in an appeal against a suspension or cancellation action taken under section 40 against the holder of a provisional driver licence because of demerit points, the Local Court cannot revisit the issue of an offence in relation to which the demerit points were incurred or the imposition of a penalty in relation to such an offence. In any such case, the Local Court may exercise only the powers that the Authority could exercise under section 40 (see subsection (3)).

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- (5) In determining an appeal against a decision to give the appellant an immediate licence suspension notice, the Local Court:
- (a) is not to vary or set aside the decision unless it is satisfied that there are exceptional circumstances justifying a lifting or variation of the suspension, and
 - (b) is not, for the purposes of any such appeal, to take into account the circumstances of the offence with which the person making the application is charged, unless the statutory rules provide to the contrary.
- (6) An appeal against a decision to give the appellant an immediate licence suspension notice must be made before the charge that occasioned the suspension has been heard and determined by a court or withdrawn.

269 Statutory rules may make provision for appeals and original applications (cf Gen Act, s 242 (1) and (2))

The statutory rules may make provision for or with respect to the following:

- (a) the conferral of jurisdiction on the Local Court to hear and determine original applications for orders of a kind prescribed by the statutory rules for the purposes of paragraph (c) of the definition of *original application* in section 266 (1),
- (b) the matters that the Local Court may or must take into account (or not take into account) when determining an appeal against a specified class or classes of appealable decision or an original application,
- (c) the manner of notification of specified appealable decisions by the Authority or any other person to persons affected by the decisions,
- (d) the notification of appeal rights concerning specified appealable decisions to persons affected by the decision,
- (e) the giving of reasons for specified appealable decisions or original applications,
- (f) the grounds on which the Local Court may (or may not) allow an appeal against a specified appealable decisions,
- (g) the adjournment of appeals or original applications under this Part,
- (h) the internal review of specified appealable decisions as a precondition to appeals against such decisions under this Part,
- (i) the actions that may be taken by the Local Court, or must be taken by the Authority or any other person, after the determination of an appeal or original application under this Part,

- (j) the circumstances in which specified appealable decisions are or are not stayed (or may or may not be stayed) by the Local Court pending the determination of an appeal under this Part,
- (k) the admission of specified certified documents in evidence in an appeal or an original application under this Part as prima facie evidence of the matters stated in the document.

270 Finality of decisions (cf Gen Act, s 242 (3); Gen Reg, cll 14 (3), 16 (3), 20 (6), 23 (5), 25 (5), 28 (5), 29A (5), 29B (6) and 140 (7))

Subject to the statutory rules, the decision of the Local Court in respect of an appeal or original application under this Part is final and is binding on the appellant or applicant and, in the case of an appeal, on the decision-maker who made the decision appealed against.

Chapter 8 Miscellaneous

271 Fixing fees for services concerning driver licensing and vehicle registration (cf DL Act, s 10; VR Act, s 8 (1) (k) and (2))

- (1) Subject to subsection (2), the Authority may, by notice published in the Gazette, fix fees, or amend, waive or revoke fees, for:
 - (a) services provided by the Authority in connection with the licensing of drivers or the renewal (or late renewal) of driver licences, and
 - (b) services provided by the Authority in connection with the registration, or the late renewal of registration, of registrable vehicles or the issue of an unregistered vehicle permit, and
 - (c) the issue and use of special and other number-plates and for damaged, lost, stolen or destroyed number-plates, and
 - (d) other matters related to services provided by the Authority under this Act or the statutory rules in connection with driver licensing or vehicle registration.
- (2) The Authority may fix a fee under subsection (1) only if:
 - (a) the fee is fixed with the approval of the Minister, and
 - (b) a fee is not already prescribed by the statutory rules for the same class of matter.
- (3) This section does not prevent any other law fixing fees for services provided by the Authority or fees being fixed under the statutory rules.

272 Power to repeal, revoke or make changes to approvals etc under this Act

Except where this Act provides otherwise, any notice, direction, declaration, exemption, approval, authorisation, appointment or permission given or made under a provision of this Act may be amended, repealed, revoked or replaced in the same manner as it may be given or made.

273 Delegation of functions under road transport legislation (cf DL Act, s 13; Gen Act, s 123; VR Act, s 12)

- (1) Subject to subsection (2), the Authority may, by instrument in writing, delegate all or any of its functions under the road transport legislation (other than this power of delegation) to:
 - (a) specified authorised officers or authorised officers of specified classes, or
 - (b) any other persons (or persons belonging to a class of persons) prescribed by the statutory rules.

- (2) The statutory rules may make provision for or with respect to limiting or excluding kinds of functions from the operation of subsection (1).
- (3) The Commissioner of Police may, by instrument in writing, delegate all or any of the Commissioner's functions under the road transport legislation (other than this power of delegation) to specified police officers or police officers of specified classes.
- (4) A delegate may sub-delegate a delegated function, but only if and to the extent that the instrument of delegation authorises the sub-delegation of the function.
- (5) Nothing in this section affects any other Act or law by or under which functions may be delegated by the Authority or the Commissioner of Police or by or under which functions of the Authority or the Commissioner of Police may otherwise be exercised by other persons.

Note. Section 49 of the *Interpretation Act 1987* contains general provisions relating to delegations of functions.

274 Unpaid fees and charges (cf DL Act, s 34; Gen Act, s 244; STM Act, s77; VR Act, s 30)

An amount of any unpaid fees or charges payable under this Act or the statutory rules is a debt due to the Authority and, except as provided by section 250 or clause 17 (2) of Schedule 2, may be recovered by the Authority in a court of competent jurisdiction from the person liable to pay the fees or changes.

275 Indemnity from personal liability for carrying out duties honestly and in good faith (cf Gen Act, s 243)

- (1) An individual does not incur civil liability for an act or omission done honestly and in good faith in the course of the individual's duties under the road transport legislation.
- (2) A liability that would, apart from subsection (1), attach to an individual because of an act or omission done honestly and in good faith in the course of the individual's duties attaches instead:
 - (a) if it is an act or omission of a police officer, to the Crown, or
 - (b) if it is an act or omission of a person acting for the Authority, to the Authority.
- (3) An individual does not incur civil or criminal liability for carrying out a test or examination in accordance with the statutory rules made for the purposes of driver licensing and expressing to the Authority in good faith an opinion formed as a result of having carried out the test or examination.

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- (4) An individual does not incur civil or criminal liability for reporting to the Authority, in good faith, information that discloses or suggests that:
- (a) another person is or may be unfit to drive, or
 - (b) it may be dangerous to allow another person to hold, to be issued or to have renewed, a driver licence or a variation of a driver licence.

276 Service of documents on persons generally (cf Gen Act, s 239)

- (1) Any document that is authorised or required by or under the road transport legislation to be given to or served on any person (other than a corporation) may be given or served:
- (a) personally, or
 - (b) by means of a letter addressed to the person and sent by post to the person's business or home address, or
 - (c) by means of a letter addressed to the person and left at the person's business or home address with a person who appears to be of or above the age of 16 years and to reside at that address.
- (2) Any document that is authorised or required by or under the road transport legislation to be given to or served on any person (being a corporation) may be given or served:
- (a) by means of a letter addressed to the corporation and sent by post to the address of any of its registered offices, or
 - (b) by means of a letter addressed to the corporation and left at the address of any of the corporation's registered offices with a person who appears to be of or above the age of 16 years and to be employed at that address.
- (3) Despite subsections (1) and (2), the statutory rules may:
- (a) provide for additional means of giving or serving documents, or
 - (b) provide for a document of a class specified by the statutory rules to be given or served only in the manner prescribed by the statutory rules, or
 - (c) provide for the date on which service of a document is taken to have been effected.
- (4) This section does not apply to a penalty notice to which section 196 applies.

277 Lodgment of documents with Authority (cf Gen Act, s 240)

- (1) If provision is made by or under the road transport legislation for the lodging of a notice or other document with the Authority, it is sufficient if the notice or other document is sent by post to, or lodged at, an office of the Authority.
- (2) Despite subsection (1), the statutory rules may:
 - (a) provide for additional means of lodging a notice or other document with the Authority, or
 - (b) provide that a notice or other document of a class specified by the statutory rules be lodged with the Authority only in the manner prescribed by the statutory rules, or
 - (c) provide for the date on which lodgment of a notice or other document is taken to have been effected.
- (3) In this section, *lodgment* of a notice or other document includes the giving of a notice or other document.

278 Form of registers (cf DL Act, s 35; VR Act, ss 10 (10) and 16B (2))

Any register that is maintained by the Authority under this Act may be kept in the form of, or as part of, one or more computer databases or in such other form as the Authority considers appropriate.

279 Preliminary discovery of information for recovery of private car park fees (cf Gen Act, s 244B)

- (1) The Authority cannot be required by preliminary discovery to disclose any information about a registrable vehicle or the registered operator of a registrable vehicle (including information contained in a relevant register) if the preliminary discovery is for the purpose of the recovery of private car park fees.
- (2) Preliminary discovery is considered to be for the purpose of the recovery of private car park fees if the preliminary discovery is in connection with ascertaining the identity or whereabouts of a person for the purpose of commencing proceedings against the person for the recovery of private car park fees or is otherwise in connection with the commencement of proceedings for the recovery of private car park fees.
- (3) In this section:
preliminary discovery means an order under Part 5 of the *Uniform Civil Procedure Rules 2005* or any requirement imposed for a similar purpose by or under any other Act, rule or law.

private car park fee means any amount alleged to be payable under the terms and conditions of a contract, arrangement or understanding in relation to the use of a car park (such as an amount payable for the use of the car park and including an amount payable for breaching any such terms and conditions), but not including an amount alleged to be payable under the terms and conditions of a contract that is in writing and signed by the relevant parties.

relevant register means a register maintained by the Authority under any Act.

280 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the day on which this Act commences.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Examples of statutory rule-making powers

(Section 24)

Part 1 Driver licensing

- 1 Driver licensing system** (cf DL Act, s 20 (1), (2) (a)–(e), (m)–(p), (s), (t), (v) and (x) and (3))
- (1) The establishment and administration of a system of licensing drivers of motor vehicles that are used on roads that:
 - (a) provides a means of authorising the driving of motor vehicles on roads, and
 - (b) enables the identification of persons as licensed drivers of motor vehicles.
 - (2) Without limiting subclause (1), the making of provision for:
 - (a) the issue or refusal to issue driver licences and renewal of driver licences or refusal of renewal, and for the imposition of conditions on driver licences, and for the replacement of and refusal to replace driver licences, and
 - (b) the cancellation, variation and suspension of driver licences, and
 - (c) the fixing of the periods for which a driver licence or renewal remains in force, and
 - (d) requiring the production of specified information by:
 - (i) applicants for driver licences or the renewal or variation of driver licences, or
 - (ii) holders of driver licences, and
 - (e) the recognition by the Authority of things done under a corresponding driver law in relation to driver licensing, and
 - (f) different classes of driver licences (including, but not limited to, conditional licences, provisional licences and learner licences), and grading each class by reference to the driving skills required for each class, and the eligibility criteria for the issue of each class of licence, and
 - (g) the extension of the period for which a person is required to hold a provisional licence if the person:
 - (i) is convicted or found guilty of an offence against section 129 (Minor must not use false evidence of age) of the *Liquor Act 2007*, or

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- (ii) is issued with a penalty notice under section 150 of the *Liquor Act 2007* in respect of an alleged offence against section 129 of that Act, and
 - (h) driver licences the subject of graffiti licence orders under the *Graffiti Control Act 2008*, and
 - (i) the Authority to exempt a person or class of persons from the requirement to hold a driver licence or a driver licence of a particular class (whether or not subject to conditions imposed by the Authority), and
 - (j) the maintenance of a NSW driver licence register and matters relating to the NSW demerit points register, and
 - (k) the form in which the Authority is to issue evidence of the authority to drive a motor vehicle provided by a driver licence and the circumstances in which that evidence must be surrendered or returned to the Authority, and
 - (l) the Authority to correct any mistake, error or omission in the NSW driver licence register, and
 - (m) the establishment and conduct of competency based assessment schemes relating to driver licensing, and
 - (n) requiring persons who are:
 - (i) applicants for driver licences or the renewal or variation of driver licences, or
 - (ii) holders of driver licences,to submit to tests or re-testing or medical or other examinations for the purpose of assessing fitness to hold or continue to hold a driver licence, or a varied driver licence, and
 - (o) the establishment and conduct of driver training schemes.

Part 2 Registration of vehicles and trader's plates

- 2 **Vehicle registration system** (cf VR Act ss 14 (3) and 15 (1) and (2) (a)–(c), (h) and (i))
 - (1) The establishment of a system of registration of registrable vehicles that are used on roads that:
 - (a) provides a means of authorising the use of registrable vehicles on roads, and
 - (b) enables the identification of each registrable vehicle that is used on a road, and of the person responsible for it.

- (2) Without limiting subclause (1), the making of provision for:
- (a) the fixing of the periods for which the registration of registrable vehicles may be effected or renewed, and
 - (b) the calculation of taxes, charges and fees for the registration of registrable vehicles for such periods as may be prescribed by the statutory rules, and
 - (c) the recognition by the Authority of things done under a law of another jurisdiction in relation to vehicle registration, and
 - (d) the form, issue, use, surrender and transfer of plates and registration labels, registration certificates and other registration documents, and
 - (e) the creation of offences in relation to the forgery or alteration of plates and of registration labels, registration certificates and other registration documents and in relation to the use of any such forged or altered plate, label, certificate or document, and
 - (f) the same kinds of matters concerning registration, the use of registered and unregistered vehicles, number-plates, vehicle standards and inspections in respect of which statutory rules could have been made under section 3 (1) of the *Traffic Act 1909* (as in force immediately before its amendment by the *Road Transport (Vehicle Registration) Act 1997*).

3 Vehicle standards and inspections (cf VR Act, s 15A)

(1) **General**

Vehicle standards, inspection or testing of registrable vehicles and the production of registrable vehicles for inspection and testing.

(2) **Vehicle standards**

Without limiting subclause (1), the making of provision for:

- (a) requirements with respect to the supply of information or documents to purchasers and prospective purchasers of registrable vehicles relating to their compliance with vehicle standards, and
- (b) the identification of any part (including an engine or engine block) of a registrable vehicle and the use of any such identification, and
- (c) authorising the Authority to exempt any particular vehicle or class of vehicles from a vehicle standard prescribed by the statutory rules.

(3) **Inspections**

Without limiting subclause (1), the making of provision for:

- (a) authorising the entry in or on any registrable vehicle (whether or not on a road), and
- (b) authorising entry into or on any premises ordinarily used for the sale of any registrable vehicle or where a registrable vehicle may be held in possession for sale, and
- (c) requirements to be observed with respect to the use and disposition of registrable vehicles that do not comply with the vehicle standards prescribed by the statutory rules or that are subject to inspections, and
- (d) requirements for lodgment, and for the forfeiture of, security for the performance of obligations specified by or under this Act on persons involved in the conduct of inspections, and
- (e) charges relating to inspections carried out by the Authority or by persons authorised by the Authority to carry out inspections.

4 Trader's plates for registrable vehicles (cf VR Act, s 15 (1) (h)–(h2))

- (1) Trader's plates in connection with the use of unregistered registrable vehicles on roads.
- (2) Without limiting subclause (1), the making of provision for:
 - (a) the form, issue, use, surrender and transfer of trader's plates, and
 - (b) the keeping of records with respect to the driving of vehicles to which trader's plates are attached, and
 - (c) the conferring of powers on police officers to require any driver or person in charge of a vehicle to which a trader's plate is attached to answer questions put to the person concerning the use of the plate.

Part 3 Safety and traffic management

5 Safety and traffic management generally (cf STM Act, cl 1 and 3 (1) (e) of Sch 1)

The regulation or prohibition of traffic, persons and animals on roads, including the following:

- (a) the places in which and the manner in which vehicles or animals may or may not be driven or ridden,
- (b) the use of roads by people on foot and other persons and by animals,

- (c) speed limits for vehicles (including speed limits that may be varied electronically or otherwise),
- (d) approved traffic enforcement devices (including the testing of such devices),
- (e) signs and other devices to control, direct or warn traffic,
- (f) the marks that are to be used on the surface of roads,
- (g) the control and reduction of:
 - (i) danger in vehicle operation, or
 - (ii) traffic congestion,
- (h) the conduct of events on roads that may disrupt traffic,
- (i) the use of safety equipment by drivers, riders, passengers and other people,
- (j) standards of conduct for safety purposes,
- (k) the taking, storage, transmission and destruction of blood and urine samples for the purposes of Schedule 3 and other matter to which that Schedule relates,
- (l) complying with directions by police officers or other persons prescribed by the statutory rules,
- (m) the use of stalls or other means for the sale of goods, or carrying out of any other business or trade, on a road for the purpose of safety and traffic management.

6 Parking (cf STM Act, cl 2 of Sch 1)

The regulation or prohibition of the parking of vehicles and parked or stopped vehicles on roads (including disability parking and pay parking), including the following:

- (a) the establishment and operation of schemes for disability parking or pay parking by councils, other persons or bodies,
- (b) the fixing and collection of fees for parking by councils, other persons or bodies and the application of such fees by the collector of the fees and the payments to be made to the Authority,
- (c) the allocation of the costs in respect of schemes for disability parking or pay parking,
- (d) the provision of pay parking by councils and other persons or bodies on a common payment basis,
- (e) the installation and operation of devices for use in connection with disability parking or pay parking,

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- (f) the issue of guidelines by the Authority in respect of disability parking or pay parking schemes and the legal effect of such guidelines,
 - (g) the granting of approvals by the Authority in respect of the establishment and operation of disability parking or pay parking schemes,
 - (h) the powers of police officers in respect of the removal of vehicles parked, standing or stopped in space provided for parking and in respect of the closing of spaces for parking,
 - (i) the resolution of disputes between different councils, other persons and bodies in respect of disability parking or pay parking.

7 Safe operation of vehicles and mass, dimension, load restraint and access requirements (cf Gen Act, s 26 (1); STM Act, cl 3 (1) (b)–(d) of Sch 1)

- (1) The safe operation of vehicles or combinations on roads, including the following:
 - (a) the loading and unloading and securing of loads,
 - (b) the keeping and production of records and other specified information in connection with the safe operation of vehicles used on roads.
- (2) Mass, dimension, load restraint and access requirements with respect to the use of roads by vehicles and combinations and the enforcement of such requirements, including the following:
 - (a) the giving of rectification notices, the detention of vehicles pending rectification and powers of inspection,
 - (b) the issuing of permits and notices to authorise the use of vehicles and combinations despite such restrictions and the fees payable in connection with such permits and notices,
 - (c) the imposition of such restrictions by means of the erection or display of signs,
 - (d) the exercise of inspection and other enforcement powers (including in relation to powers conferred under Chapter 7) in relation to such requirements,
 - (e) the keeping and production of records and other specified information in connection with such requirements,
 - (f) the granting or conferral of exemptions from compliance with such requirements,
 - (g) the creation, approval or use of schemes for the mass management of vehicles or combinations in connection with such requirements.

(3) In this clause:

access requirement means a requirement that relates to the roads or class of roads on which a vehicle or combination may or may not be taken, or otherwise limits the area in which a vehicle or combination may or may not operate.

dimension requirement means a requirement that relates to the dimensions of a vehicle or combination or a load or component of a vehicle or combination, including (for example):

- (a) the dimensions of a vehicle or combination, disregarding its load (if any), or
- (b) the dimensions of a vehicle or combination including its load, or
- (c) the dimensions of the load on a vehicle or combination, or
- (d) the internal measurements of a vehicle or combination, including (for example) the distance between:
 - (i) components of a vehicle or combination, or
 - (ii) vehicles in a combination, or
 - (iii) a vehicle in a combination and a component of another vehicle in the combination.

load restraint requirement means a requirement that relates to the restraint or positioning of a load or any part of a load on a vehicle or combination.

mass requirement means a requirement that relates to the mass of a vehicle or combination or the mass of or on any component of a vehicle or combination, and includes:

- (a) a requirement concerning mass limits relating to:
 - (i) the tare mass of a vehicle or combination (that is, the actual mass of the vehicle or combination excluding any load in or on the vehicle or combination), or
 - (ii) the gross mass of a vehicle or combination (that is, the unladen mass of the vehicle or combination together with any load in or on the vehicle or combination), or
 - (iii) the mass of the load in or on a vehicle or combination, or
 - (iv) the mass on a tyre, an axle or an axle group of the vehicle or combination, and
- (b) a requirement concerning mass limits relating to axle spacing, and
- (c) mass limits set out on signs (for example, a sign-posted bridge limit).

8 Towing fees (cf STM Act, cl 4 of Sch 1)

- (1) The payment of a fee by the driver or responsible person for a vehicle in relation to the towing of the vehicle as a consequence of the exercise of functions under this Act or the statutory rules.
- (2) The recovery of any such fee by the Authority or any other person as a debt due to the Crown in any court of competent jurisdiction.
- (3) The issue of certificates as to the fact and cost of towing and their use as evidence of those matters in proceedings before a court.

9 Child safety (cf STM Act, cl 5 of Sch 1)

- (1) The duties of parents and other persons responsible for children (not being older than 16 years and 9 months of age) in respect of the use of roads or vehicles on roads.
- (2) The establishment and conduct of schemes to assist children to cross roads safely, including the following:
 - (a) enabling the Authority or a specified person to conduct, or authorise other persons to conduct, such schemes,
 - (b) enabling the Authority or a specified person:
 - (i) to amend or replace such schemes, and
 - (ii) to impose conditions on the authority to conduct schemes, and
 - (iii) to revoke an authority to conduct schemes,
 - (c) signs to be displayed at crossings and the exhibition of such signs,
 - (d) the placement of barriers across or partly across a road near a crossing,
 - (e) conditions relating to the wearing or display of insignias, badges, belts or other articles of uniform by any persons taking part in crossing schemes,
 - (f) providing that evidence that a sign was exhibited, as prescribed, by a person at or near a crossing, is admissible and is prima facie evidence in proceedings in any court that the exhibition of the sign by such person was authorised,
 - (g) the prescription of any other matters necessary or convenient to be prescribed for the purpose of carrying out any such scheme.

10 Duties of participants in, and witnesses to, road accidents (cf STM Act, cl 6 of Sch 1)

The duties of any driver of a vehicle or other person involved in or affected by an accident on a road, including in relation to the following matters:

- (a) the production of driver licences or other identification to any person by a participant in the accident,
- (b) the giving of particulars concerning:
 - (i) the vehicle, persons and property involved in or affected by the accident, or
 - (ii) any damage or injury caused by the accident, or
 - (iii) the identity and addresses of any witnesses to the accident.

11 Records in respect of rented vehicles (cf STM Act, cl 7 of Sch 1)

The records to be kept by the owner of a vehicle rented to be driven by the hirer or the hirer's employee or agent and for the inspection of such records by any police officer.

12 Police powers concerning traffic management (cf STM Act, cl 8 of Sch 1)

- (1) The marking of tyres of vehicles by means of crayon, chalk or any similar substance by police officers and special constables in the employ of the Commissioner of Police or other authorised officers for any purpose connected with the enforcement of any of the provisions of any Act or any statutory rule made under any Act.
- (2) The making of provision for:
 - (a) the seizure and for the taking charge of, removal or towing away of any vehicle that is a danger or unreasonable obstruction to traffic or has been abandoned on a road, or has been caused or permitted to stand, wait, stop or to be parked contrary to law on any part of a road in which is conspicuously displayed a sign exhibiting or including the words "tow away area" or "vehicles impounded" or other words indicating that such a vehicle is subject to seizure, and
 - (b) the keeping or impounding, at a place appointed or set apart by the Commissioner of Police for the purpose, of any vehicle so removed or towed away, and
 - (c) the conditions to be observed before the release of any such vehicle, including a condition for payment of such amount as may, from time to time, be fixed by the Commissioner of Police in respect of the seizure, taking charge of, removal, towing away, keeping, impounding or releasing of any such vehicle, and for the disposal or destruction of any such vehicle if the owner fails

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- within the time prescribed to claim the vehicle and to pay that amount, and
- (d) the fixing of different amounts by the Commissioner of Police as referred to in paragraph (c) in respect of different classes of vehicles or according to different circumstances, and
 - (e) the conditions to be observed before a vehicle can be seized.

Part 4 National road transportation legislation

13 Matters relating to national road transport legislation (cf Gen Act, s 11 (1))

Any matter dealt with by regulations made under section 7 of the *National Transport Commission Act 2003* of the Commonwealth setting out model legislation or road transport legislation (within the meaning of that Act).

Part 5 General

14 Fees (cf DL Act, s 20 (2) (f)–(i), (r) and (w); Gen Act, s 10 (2) (b)–(e); STM Act, cl 9 of Sch 1; VR Act, ss 14 (6) and 15 (2) (e)–(f))

Fees, including (but not limited to) the following:

- (a) the fixing of fees for services provided by the Authority under this Act or the statutory rules, including (without limitation) the fixing of:
 - (i) fees for services provided by the Authority in connection with the licensing of drivers or the renewal or late renewal of driver licences and other matters related to services provided under this Act or the statutory rules in connection with driver licensing, and
 - (ii) fees for services provided by the Authority in connection with the registration, or the late renewal of registration, of registrable vehicles or the issue of an unregistered vehicle permit, and
 - (iii) additional fees for lodging late applications for the renewal of a driver licence or for the renewal or transfer of the registration of a registrable vehicle,
- (b) the fixing of fees for permits issued under the statutory rules,
- (c) the collection and recovery of fees fixed under this Act or the statutory rules,
- (d) the granting or giving of concessions (either in part or in full) for fees fixed under this Act or the statutory rules for specified classes of people,

- (e) the refund, or partial refund, of fees fixed under this Act or the statutory rules (including refunds resulting from concessions for fees),
- (f) the waiver or postponement of fees fixed under this Act or the statutory rules,
- (g) the regulation of the payment and application of fees paid under this Act or the statutory rules.

15 Forms (cf DL Act, s 20 (2) (j); VR Act, s 15 (2) (g))

The approval by the Authority of the form in which applications are to be made to the Authority, and the form in which documents are to be issued by the Authority, for the purposes of this Act and the statutory rules.

16 Updating references to outdated or incorrect references to statutory rules under this Act (cf STM Act, cl 10 of Sch 1)

The repeal or amendment of any reference in any Act or statutory rule made under any Act to any of the statutory rules made under this Act (or to a provision of the statutory rules made under this Act) where the reference is (or will become) out of date or otherwise incorrect by reason of the repeal, amendment, renumbering, renaming or remaking of any statutory rules made under this Act (or a provision of those statutory rules).

Schedule 2 Registration charges for heavy vehicles

Part 1 Preliminary

1 Definitions (cf VR Act, s 17)

In this Schedule:

administration fee means a fee payable under clause 4 (2).

appropriate officer means any person authorised by the Authority for the purposes of this Schedule either generally or in any particular case.

chargeable heavy vehicle means a vehicle that has a MRC (Mass Rating for Charging) of more than 4.5 tonnes.

compliance plate means a plate authorised to be placed on a vehicle, or taken to have been placed on a vehicle, under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

configuration of a vehicle means a description of a vehicle in the statutory rules for which separate provision is made in the statutory rules for the amount of the registration charge.

financial year means a year commencing on 1 July.

MRC (Mass Rating for Charging), in relation to a vehicle, means:

- (a) the maximum mass of the vehicle (including any load, recorded on the compliance plate as the GVM, GTMR or ATM of the vehicle), or
- (b) in relation to a vehicle for which there is no compliance plate—its operating mass.

Note. **GVM** means Gross Vehicle Mass, **GTMR** means Gross Trailer Mass Rating and **ATM** means Aggregate Trailer Mass.

operating mass, in relation to a vehicle, means the maximum mass of the vehicle, including any load, as determined by the Authority having regard to the design and construction of the vehicle or of any of its components.

owner, in relation to a vehicle, includes:

- (a) every person who is the owner, joint owner or part owner of the vehicle, and
- (b) any person who has the use of the vehicle under a hire-purchase or hiring agreement,

but does not include the lessor of a vehicle under a hire-purchase agreement.

registration charge means a charge imposed under this Schedule for the registration or renewal of registration of a chargeable heavy vehicle.

vehicle means a motor vehicle or trailer.

Part 2 Amount of registration charges for chargeable heavy vehicles

2 Amount of annual registration charge for chargeable heavy vehicles (cf VR Act, s 17A)

- (1) The annual registration charge for a chargeable heavy vehicle that is registered, or the registration of which is renewed, during a particular financial year is the amount for the type or kind of vehicle specified by, or calculated in accordance with, the statutory rules.

Note. See clause 4 for the calculation of registration charges for chargeable heavy vehicles registered for less than one year. Also, annual registration charges are not payable to the extent to which an exemption or partial exemption is granted by or under statutory rules made for the purposes of subclause (2) (c).

- (2) Without limiting subclause (1), the statutory rules may make provision for or with respect to the following:
- (a) the specification or calculation of registration charges by reference to types or kinds of chargeable heavy vehicles,
 - (b) the indexation of the amount payable for registration charges over a number of financial years,
 - (c) exemptions or partial exemptions (or the granting of exemptions or partial exemptions) from, or reductions in, registration charges,
 - (d) the refunding of registration charges paid for the registration of a chargeable heavy vehicle, if because of the occurrence of any of the following during the currency of the registration, no charges or a reduced amount of charges would be payable in respect of the vehicle on the renewal of its registration:
 - (i) a change in the construction, equipment, configuration, use or ownership of the vehicle,
 - (ii) an exemption or partial exemption (or the granting of an exemption or partial exemption) from, or reduction in, registration charges for vehicles of the kind to which the chargeable heavy vehicle belongs,
 - (e) the amount of any such refund to be calculated in accordance with a formula to be prescribed by the statutory rules,
 - (f) the production, at the time of application for registration or renewal of registration of a chargeable heavy vehicle or at any time during the currency of the registration, of weighbridge tickets showing the weight of the vehicle,

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- (g) fees of an administrative nature for changes in registration charges and registration arising out of a change in the construction, equipment, configuration, use or ownership of a chargeable heavy vehicle.
 - (3) The Minister is not to recommend the making of a statutory rule that prescribes any amounts as annual registration charges, or the manner in which annual registration charges are to be calculated, for chargeable heavy vehicles unless the Minister is satisfied that the provisions of the statutory rule are consistent with:
 - (a) model legislation within the meaning of the *National Transport Commission Act 2003* of the Commonwealth, or
 - (b) provisions for road transport laws that are recommended or approved by the Australian Transport Council or the National Transport Commission under the Agreement referred to in section 4 of the *National Transport Commission Act 2003* of the Commonwealth for implementation or adoption by the parties to that Agreement.
 - (4) For the avoidance of doubt, subclause (3) does not limit the ability of the Minister to recommend the making of a statutory rule that makes provision for or with respect to exemptions or partial exemptions from, or refunds of, registration charges.

3 Registration charge for primary producer's vehicle (cf VR Act, s 17B)

- (1) If the registration charge for a primary producer's vehicle that, but for this clause, would be payable under this Schedule (the ***charge under this Schedule***) is more than the motor vehicle tax that, but for section 3B of the *Motor Vehicles Taxation Act 1988*, would be payable under that Act (the ***tax under the 1988 Act***), the registration charge for the vehicle is not the charge under this Schedule but the tax under the 1988 Act.
- (2) The effect of the following may be ignored for the purpose of calculating the motor vehicle tax referred to in subclause (1):
 - (a) any exemption granted under section 17 of the *Motor Vehicles Taxation Act 1988*,
 - (b) clause 3 (d) of Schedule 1 to that Act (to the extent to which it excludes motor lorries from the operation of that clause),
 - (c) clause 5 of Schedule 1 to that Act.
- (3) In this clause:
primary producer's vehicle has the same meaning as in the *Motor Vehicles Taxation Act 1988*.

Part 3 Registration charges for registration periods of less than one year

4 Amount of registration charge for chargeable heavy vehicle registered for less than one year (cf VR Act, s 17C)

- (1) The amount of the registration charge for a chargeable heavy vehicle to be registered for a period of less than one year is the amount calculated by multiplying the relevant annual registration charge for the vehicle by the number of days for which registration or renewal of registration is to have effect and dividing the result by 365.
- (2) If registration or renewal of registration of a chargeable heavy vehicle is to have effect for a period of less than one year, the Authority may impose an additional administration fee of not more than 10 percent of the relevant registration charge for that period.
- (3) The amount of a registration charge or administration fee referred to in this clause is to be rounded up or down to the nearest whole dollar amount (rounding an amount of 50 cents upwards).

Part 4 When registration charges payable

5 Definition (cf VR Act, s 17D)

In this Part:

registration charges includes administration fees.

6 Payment of registration charges (cf VR Act, s 17E)

- (1) The registration charges for a chargeable heavy vehicle must be paid:
 - (a) at the time of application for registration of the vehicle, and
 - (b) at the time of application for each renewal of registration of the vehicle.
- (2) A person in whose name an application for registration or renewal of registration is made must not fail to pay the full amount of registration charges required by subclause (1).

Maximum penalty: 20 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).
- (3) Registration charges are payable in respect of a registration or renewal of registration that occurs after the commencement of this clause.
- (4) Despite the conviction of a person for an offence against this clause, the person remains liable to pay the unpaid amount of the registration charges.

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- 7 Use of unregistered vehicles and vehicles for which charges unpaid** (cf VR Act, s 17F)
- (1) This clause applies to the following kinds of chargeable heavy vehicle (other than a vehicle exempted from registration):
- (a) a vehicle that is not registered,
 - (b) a registered vehicle that is liable to registration charges (including any charges or additional charges payable under clause 11) but for which such charges, though due and payable, have not been paid.
- (2) The owner of a vehicle to which this clause applies must not:
- (a) use or drive the vehicle on a road, or
 - (b) cause or permit it to be driven on a road.
- Maximum penalty: 20 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).
- (3) In addition to imposing a penalty for an offence against this clause, the court concerned may order the owner to pay to the Authority within a time specified by the order:
- (a) if the vehicle is not registered—the registration charges that would be due on the application for the registration or renewal of registration of the vehicle for a period of 1 year or for such greater or lesser period as the court in all the circumstances thinks just, or
 - (b) if the vehicle is registered—the registration charges so due and payable.

Part 5 Assessment and collection of charges and fees

- 8 Authority to determine charges and fees** (cf VR Act, s 17G)
- The Authority must determine, in accordance with this Schedule and the statutory rules, whether any registration charges or administration fees are payable under this Schedule in respect of a vehicle and, if there are, the amount of the charges or fees.
- 9 Provision of information to determine charges** (cf VR Act, s 17H)
- (1) For the purpose of determining whether any registration charges under this Schedule are payable in respect of a vehicle and, if so, the amount of the charges, the Authority or an appropriate officer may:
- (a) require the owner or person in charge of the vehicle to produce the vehicle within a specified period and at a specified place and provide all reasonable facilities to enable an appropriate officer to examine it, or

- (b) require the owner or person in charge of the vehicle or person liable to pay registration charges to provide such information in writing by statutory declaration or otherwise as the Authority or the appropriate officer considers appropriate.
- (2) An owner or other person must not fail to comply with a requirement under subclause (1).
Maximum penalty: 20 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).
- (3) An owner or other person must not provide information knowing it to be false or misleading in respect of any matter necessary or convenient to enable the appropriate registration charges under this Schedule to be determined.
Maximum penalty: 20 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).
- (4) An owner or other person must comply with a requirement under subclause (1) at the owner's or other person's own cost if required to do so by the Authority.

10 Adjustment of charges by Authority (cf VR Act, s 171)

- (1) The Authority may, at any time, alter, vary or rescind any determination as to registration charges or administration fees, or may refund the whole or any portion of any charges or fees paid, for the purpose of ensuring that this Schedule is complied with.
- (2) The Authority may require a person in whose name a chargeable heavy vehicle is registered to pay registration charges or administration fees or additional charges or fees, within a specified time, if the charges or fees are payable as a result of action taken under subclause (1).
- (3) A person must not fail to comply with a requirement under subclause (2).
Maximum penalty: 20 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).
- (4) In addition to imposing a penalty for any such offence, the court concerned may order the person to pay to the Authority within a specified period the amount of the registration charges or administration fees or additional charges or fees.
- (5) A person is not liable to pay registration charges or administration fees or additional charges or fees as a result of action taken under subclause (1) if the Authority's determination was made more than 3 years before the date of the action and the person satisfies the Authority that there was no intention to avoid paying charges or fees.

11 Changes in owners or to vehicles must be notified to Authority (cf VR Act, s 17J)

- (1) A person in whose name a chargeable heavy vehicle is registered must notify the Authority of any change during the currency of the registration in the construction, equipment, configuration, use or ownership of the vehicle of such a nature that registration charges or additional registration charges would be payable if the registration was renewed when the change occurred.

Maximum penalty: 100 penalty units.

- (2) The person or, if the change is in ownership, the new owner must pay to the Authority the appropriate amount of registration charges or additional registration charges forthwith or within the period specified by the Authority.

Maximum penalty: 20 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).

- (3) A person who is required by subclause (1) to notify the Authority of any change in the construction, equipment, configuration, use or ownership of a vehicle must not authorise or permit the use of the vehicle on a road until the Authority has been so notified.

Maximum penalty: 100 penalty units.

- (4) In addition to imposing a penalty for an offence against this clause, the court concerned may order the offender to pay to the Authority within a specified period any amount that, from the evidence given during the proceedings, the court is satisfied the offender should have paid to the Authority as registration charges or administration fees or additional charges or fees.

12 Calculation of charges arising from changes (cf VR Act, s 17K)

- (1) The registration charges or additional registration charges payable under clause 11 are for the unexpired period of the registration or for such shorter period as the Authority, having regard to the temporary nature of any change, determines should apply.

- (2) The charges are to be calculated at the rate of:

- (a) in the case of the registration of a chargeable heavy vehicle for a period of more than 3 months—one-twelfth of the charge applicable after the change in respect of a yearly registration if the vehicle was exempt from or not liable to registration charges before the change or, as the case may be, one-twelfth of the difference between the charge applicable before the change and the charge applicable after the change in respect of a yearly registration, or

- (b) in the case of the registration of a chargeable heavy vehicle for a period of 3 months or less—one-third of the charge applicable after the change in respect of a quarterly registration if the vehicle was exempt from or not liable to registration charges before the change or, as the case may be, one-third of the difference between the charge applicable before the change and the charge applicable after the change in respect of a quarterly registration,

for each month or part of a month in the unexpired period or the shorter period, as the case may be.

13 Refund of charges on cancellation of registration (cf VR Act, s 17L)

- (1) If the Authority cancels the registration of a chargeable heavy vehicle on the application of the person in whose name the vehicle is registered before the registration expires, the Authority may, in its discretion, grant to the person a refund of the registration charges imposed in respect of the vehicle.
- (2) The refund is to be calculated:
 - (a) at the rate of one-twelfth of the charge applicable in respect of a yearly registration for each complete month in the portion of the unexpired period of the registration at the date of the cancellation, less any cancellation fee determined by the Authority, or
 - (b) in such manner as may be prescribed by the statutory rules.

14 Time limit for refunds (cf VR Act, s 17M)

A person is not entitled to a refund of registration charges if the application for the refund is made more than 3 years from the date of payment of the charges.

Part 6 Other provisions dealing with registration charges

15 Vehicles registered in another jurisdiction (cf VR Act, s 17N (1) and (2))

- (1) The owner of a chargeable heavy vehicle registered in another jurisdiction, or which is exempted from registration in another jurisdiction (other than because the vehicle is registered elsewhere), must not:
 - (a) use or drive the vehicle on a road other than in the configuration for which it is registered or in which it is so exempt, or
 - (b) cause or permit it to be so driven on a road.

Maximum penalty: 100 penalty units.

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- (2) This clause does not apply if the vehicle, in its changed configuration, would be liable to the same or less registration charges in the jurisdiction in which it is registered than those paid for the configuration for which it is registered or in which it is so exempt.

16 Powers to do certain things not affected (cf VR Act, s 17O)

Nothing in this Schedule affects any power under the road transport legislation (other than this Schedule) or any other Act:

- (a) to charge fees in respect of the inspection of vehicles for the purpose of registration, or
- (b) to make rebates of registration charges for particular classes of vehicles or road users, or
- (c) to charge pro rata amounts for registrations that are for less than a whole year, or
- (d) to make refunds in respect of the surrender of the registration of a vehicle, or
- (e) to charge other administrative fees or other charges in respect of matters relating to vehicles (including registration of vehicles).

17 Particulars of orders to be sent to Authority (cf VR Act, s 17P)

- (1) The relevant registrar of the Local Court is to forward to the Authority particulars of any conviction or order made under this Schedule or statutory rules made for the purposes of this Schedule.
- (2) Whenever a person is by an order made by a court under this Schedule adjudged to pay registration charges or administration fees or additional charges or fees, the provisions of any other Act do not apply to or in respect of the order, but instead the order:
 - (a) operates as an order for the payment of money under the *Civil Procedure Act 2005*, and
 - (b) is enforceable as such an order under the provisions of that Act.
- (3) For the purposes of subclause (2), an order referred to in that subclause may be entered in the records of the Local Court if the order was made in the manner prescribed by rules made under the *Civil Procedure Act 2005*.
- (4) A registrar of the Local Court must pay to the Authority any amount paid to the registrar under an order referred to in subclause (2).

18 Evidence of charges and fees (cf VR Act, s 17Q)

In any proceedings under this Schedule, the production by the Authority or on its behalf of a certificate purporting to be signed by an appropriate officer certifying the following is admissible in those proceedings and is evidence of the particulars contained in the certificate:

- (a) that the amount specified in the certificate as being the amount of registration charges or administration fees payable in respect of a vehicle is due and unpaid, or was due or paid on a specified date, or was not paid before a specified date,
- (b) that an adjustment of charges or a requirement to pay registration charges or additional registration charges in respect of a vehicle was made in accordance with this Schedule.

19 Variation and revocation of exemptions and other actions (cf VR Act, s 17R)

- (1) The Minister (in the case of an exemption or partial exemption from registration charges under statutory rules made for the purposes of this Schedule) or the Authority (in the case of a reduction of registration charges, a refund of registration charges or an approval under this Schedule or statutory rules made for the purposes of this Schedule) may:
 - (a) impose such conditions as the Minister or Authority thinks fit, and
 - (b) revoke or vary any such condition or add any condition at any time during the period in respect of which the exemption, partial exemption, reduction, refund or approval operates.
- (2) A person must not fail to comply with a condition in force under this clause.
Maximum penalty: 20 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).
- (3) When this Schedule or statutory rules made for the purposes of this Schedule confer power on the Minister, the Authority or an appropriate officer:
 - (a) to grant an exemption or partial exemption from, or reduction of, charges, or
 - (b) to grant an approval, or
 - (c) to give a direction, or
 - (d) to make a request, or

(e) to do any other act, matter or thing,
the Minister, Authority or officer is also empowered to revoke or vary the exemption, partial exemption, reduction, approval, direction, request, act, matter or thing.

20 Charges and fees to be paid into Roads and Maritime Services Fund (cf VR Act, s 17S)

- (1) There is appropriated by this clause for payment out of the Consolidated Fund into the Roads and Maritime Services Fund all amounts received on or after the commencement of this clause in payment of registration charges and administration fees under this Schedule.
- (2) There is payable out of the Roads and Maritime Services Fund such amounts as may become payable under this Schedule by way of refunds of registration charges or administration fees.
- (3) In this clause:
Roads and Maritime Services Fund means the Roads and Maritime Services Fund established under the *Transport Administration Act 1988*.

Schedule 3 Testing for alcohol and drug use

Part 1 Preliminary

1 Definitions (cf STM Act, s 18A and Dict)

(1) In this Schedule:

accident—see clause 10 (1).

analyst means:

- (a) any person employed by the Government as an analyst, or
- (b) any person who is an analyst within the meaning of the *Poisons and Therapeutic Goods Act 1966*, or
- (c) a person (or a person belonging to a class or description of persons) prescribed by the statutory rules.

approved oral fluid analysing instrument means any instrument that:

- (a) is designed to ascertain, by analysis of a person's oral fluid, the presence of any prescribed illicit drug in that person's oral fluid, and
- (b) meets the standards prescribed by the statutory rules for such an instrument, and
- (c) is approved by the Governor by order published in the Gazette.

approved oral fluid testing device means a device that:

- (a) is designed to indicate the presence of any prescribed illicit drug in a person's oral fluid, and
- (b) meets the standards prescribed by the statutory rules for such a device, and
- (c) is approved by the Governor by order published in the Gazette.

authorised sample taker means any of the following:

- (a) a medical practitioner,
- (b) a registered nurse,
- (c) a person (or a person belonging to a class or description of persons) prescribed by the statutory rules as being authorised to take samples for the purposes of this Schedule.

breath analysing instrument means any instrument of a type approved by the Governor by order published in the Gazette as being designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in that person's breath or blood.

breath analysis means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's breath or blood.

breath test means a test for the purpose of indicating the concentration of alcohol present in a person's breath or blood, carried out on that person's breath by means of a device, not being a breath analysing instrument, of a type approved by the Governor by order published in the Gazette.

hospital means any of the following:

- (a) a public hospital within the meaning of the *Health Services Act 1997* controlled by a local health district or the Crown,
- (b) a statutory health corporation or affiliated health organisation within the meaning of the *Health Services Act 1997*,
- (c) a private health facility within the meaning of the *Private Health Facilities Act 2007*.

oral fluid analysis means a test carried out by an approved oral fluid analysing instrument for the purpose of ascertaining, by analysis of a person's oral fluid, the presence of prescribed illicit drugs in that person's oral fluid.

oral fluid test means a test carried out by an approved oral fluid testing device for the purpose of ascertaining whether any prescribed illicit drugs are present in that person's oral fluid.

prescribed place means any premises, institution or establishment that is prescribed by the statutory rules as a place where samples may be taken under this Schedule.

- (2) Words, terms and expressions used in this Schedule that are defined for the purposes of Part 5.1 of this Act have the same meaning as they have in that Part.

Note. Some of the words, terms and expressions used in this Schedule are also defined by section 4.

Part 2 Powers to test and take samples

Division 1 Introduction

2 When testing, analysis, assessment or sample taking not permitted (cf STM Act, ss 17, 18F, 24C and 28)

- (1) A police officer cannot require a person to submit to a test, analysis or assessment, or to provide a sample, under this Schedule:
 - (a) if the person has been admitted to hospital for medical treatment unless:

- (i) the medical practitioner in immediate charge of the person's treatment has been notified of the intention to make the requirement, and
 - (ii) the medical practitioner does not object on the grounds that compliance with it would be prejudicial to the proper care or treatment of that person, or
 - (b) in relation to the taking of a sample under clause 11—if an authorised sample taker has objected on the grounds that compliance would be dangerous to the person's health, or
 - (c) if it appears to the officer that it would, by reason of injuries sustained by that person, be dangerous to the person's medical condition to submit to the test, analysis or assessment or provide the sample, or
 - (d) at any time after the expiration of the relevant period (if any) for the test, analysis, assessment or sample concerned, or
 - (e) at the person's home.
- (2) The *relevant period* for the purposes of subclause (1) (d) is:
- (a) for a breath test or breath analysis under Division 2—the period of 2 hours from the occurrence of the event by reason of which the officer was entitled under clause 3 (1) to require the person to submit to a breath test, or
 - (b) for an oral fluid test given or an oral fluid sample taken under Division 3—at any time after the expiration of 2 hours from the occurrence of the event that entitled the officer under clause 6 (1) to require the person to undergo an oral fluid test or provide a sample, or
 - (c) for a blood sample taken under clause 9—at any time after the expiration of 4 hours from the occurrence of the event that entitled the officer under clause 6 (1) to require the person to submit to an oral fluid test, or
 - (d) for a blood or urine sample taken under clause 12—at any time after the expiration of 4 hours from the occurrence of the accident concerned, or
 - (e) for a blood or urine sample taken under Division 5—at any time after the expiration of 4 hours from the occurrence of the event referred to in clause 13 (2) (a) (i) or (ii) because of which the officer was entitled to require the person to submit to the assessment or provide the sample.

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- (3) This clause has effect despite any other provision of this Schedule that confers a power on a police officer to require a person to submit to a test, analysis or assessment, or to provide a sample, under this Schedule.

Note. This clause does not limit or otherwise affect the duty of a medical practitioner to take a sample from an accident hospital patient under clause 11.

Division 2 Random breath testing and breath analysis

3 Power to conduct random breath testing (cf STM Act, s 13 (1) and (3A)–(5))

- (1) A police officer may require a person to submit to a breath test in accordance with the officer's directions if the officer has reasonable cause to believe that:
- (a) the person is or was driving a motor vehicle on a road, or
 - (b) the person is or was occupying the driving seat of a motor vehicle on a road and attempting to put the motor vehicle in motion, or
 - (c) the person (being the holder of an applicable driver licence) is or was occupying the seat in a motor vehicle next to a learner driver while the driver is or was driving the vehicle on a road.
- (2) Before requiring a person to submit to a breath test under subclause (1), and for the purpose of determining whether to conduct such a test, a police officer may conduct a preliminary assessment to determine if alcohol is present in the person's breath by requiring the person to talk into a device that indicates the presence of alcohol.
- (3) Without limiting any other power or authority, a police officer may, for the purposes of this clause, request or signal the driver of a motor vehicle to stop the vehicle.
- (4) A person must comply with any request or signal made or given to the person by a police officer under subclause (3).
Maximum penalty: 10 penalty units.

4 Arrest following failed breath test (cf STM Act, s 14)

- (1) A police officer may exercise the powers referred to in subclause (2) in respect of a person if:
- (a) it appears to the officer from a breath test carried out under clause 3 (1) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of more than zero grams in 210 litres of breath or 100 millilitres of blood and the officer has reasonable cause to believe the person is a novice driver in respect of the motor vehicle concerned, or

- (b) it appears to the officer from a breath test carried out under clause 3 (1) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of not less than 0.02 grams in 210 litres of breath or 100 millilitres of blood and the officer has reasonable cause to believe the person is a special category driver in respect of the motor vehicle concerned, or
 - (c) it appears to the officer from a breath test carried out under clause 3 (1) by the officer that the device by means of which the test was carried out indicates that there may be present in the person's breath or blood a concentration of alcohol of not less than 0.05 grams in 210 litres of breath or 100 millilitres of blood, or
 - (d) the person refused to submit to a breath test required by a police officer under clause 3 (1) or fails to submit to that test in accordance with the directions of the officer.
- (2) A police officer may:
- (a) arrest a person referred to in subclause (1) without warrant, and
 - (b) take the person (or cause the person to be taken) with such force as may be necessary to a police station or such other place as the officer considers desirable, and
 - (c) detain the person, or cause the person to be detained, at that police station or other place for the purposes of submitting to a breath analysis in accordance with this Division.

5 Breath analysis following arrest (cf STM Act, s 15 (1)–(3))

- (1) A police officer may require a person who has been arrested under clause 4 to submit to a breath analysis in accordance with the directions of the officer.
- (2) A breath analysis must be carried out by a police officer authorised to do so by the Commissioner of Police at or near a police station or such other place as that officer considers desirable.
- (3) As soon as practicable after a person has submitted to a breath analysis, the police officer operating the breath analysing instrument must deliver a written statement to that person signed by that officer specifying the following:
 - (a) the concentration of alcohol determined by the analysis to be present in that person's breath or blood and expressed in grams of alcohol in 210 litres of breath or 100 millilitres of blood,

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- (b) the day on and time of the day at which the breath analysis was completed.

Division 3 Random oral fluid testing for prescribed illicit drugs

6 Power to conduct random oral fluid testing (cf STM Act, s 18B (1), (4) and (5))

- (1) A police officer may require a person to submit to one or more oral fluid tests for prescribed illicit drugs in accordance with the officer's directions if the officer has reasonable cause to believe that:
 - (a) the person is or was driving a motor vehicle on a road, or
 - (b) the person is or was occupying the driving seat of a motor vehicle on a road and attempting to put the motor vehicle in motion, or
 - (c) the person (being the holder of an applicable driver licence) is or was occupying the seat in a motor vehicle next to a learner driver while the driver is or was driving the vehicle on a road.
- (2) Without limiting any other power or authority, a police officer may, for the purposes of this clause, request or signal the driver of a motor vehicle to stop the vehicle.
- (3) A person must comply with any request or signal made or given to the person by a police officer under subclause (2).
Maximum penalty: 10 penalty units.

7 Arrest following failed oral fluid test or refusal or inability to submit to test (cf STM Act, s 18C)

- (1) A police officer may exercise the powers referred to in subclause (2) in respect of a person if:
 - (a) it appears to the officer from one or more oral fluid tests carried out under clause 6 (1) by the officer that the device by means of which the test was carried out indicates that there may be one or more prescribed illicit drugs present in the person's oral fluid, or
 - (b) the person refused to submit to an oral fluid test required by an officer under clause 6 (1) or fails to submit to that test in accordance with the directions of the officer.
- (2) A police officer may:
 - (a) arrest a person referred to in subclause (1) without warrant, and
 - (b) take the person (or cause the person to be taken) with such force as may be necessary to a police station or such other place as the officer considers desirable and there detain the person (or cause the person to be detained) for the purpose of the person providing oral fluid samples in accordance with clause 8, and

- (c) if clause 9 permits the taking of a blood sample from the person—take the person (or cause the person to be taken) with such force as may be necessary to a hospital or a prescribed place and there detain the person (or cause the person to be detained) for the purpose of the person providing such a blood sample in accordance with clause 9.

8 Providing an oral fluid sample for oral fluid analysis following arrest (cf STM Act, s 18D (1))

- (1) A police officer may require a person who has been arrested under clause 7 to provide an oral fluid sample in accordance with the directions of the officer.
- (2) An oral fluid sample taken under this clause may be used for the purpose of conducting an oral fluid analysis.

Note. Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

9 Taking blood sample following arrest (cf STM Act, s 18E (1) and (2))

- (1) A police officer may require a person to provide a sample of the person's blood (whether or not the person consents to the provision of the sample) in accordance with the directions of an authorised sample taker if the person:
 - (a) has attempted to provide an oral fluid sample as directed under clause 8 (1), but
 - (b) has been unable to comply with that direction (for example, because no oral fluid was physically able to be produced).

- (2) An authorised sample taker is under a duty to take the sample if the authorised sample taker is informed by the police officer that the sample is required to be taken for the purposes of this clause.

Note. A refusal or failure by the authorised sample taker to take a sample that the authorised sample taker is required to take under this Schedule may constitute an offence against clause 20.

- (3) A blood sample taken under this clause may be used for the purpose of conducting an analysis to determine whether the blood contains any prescribed illicit drugs.

Note. Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

Division 4 Accidents**10 Interpretation** (cf STM Act, ss 19, 20 (1) and 24A (1))

- (1) In this Division:
- accident** means an accident on a road involving a motor vehicle or other vehicle or a horse.
- accident hospital patient** means a person who:
- (a) attends at, or is admitted into, a hospital for examination or treatment in consequence of an accident (whether occurring in this jurisdiction or elsewhere), and
 - (b) is at least 15 years of age.
- accident participant** means a person who:
- (a) at the time of an accident, was:
 - (i) driving a motor vehicle involved in the accident, or
 - (ii) occupying the driving seat of a motor vehicle involved in the accident and attempting to put the motor vehicle in motion, or
 - (iii) the holder of an applicable driver licence and occupying the seat in the motor vehicle next to a learner driver who was driving a motor vehicle involved in the accident, and
 - (b) is at least 15 years old.
- (2) A reference in this Division to a **hospital** includes a reference to any premises, institution or establishment prescribed by the statutory rules as a hospital for the purposes of this Division.

11 Blood samples to be taken in hospitals from certain accident hospital patients (cf STM Act, s 20 (2)–(6))

- (1) Any medical practitioner by whom an accident hospital patient is attended at a hospital is under a duty to take a sample of the patient's blood for analysis as soon as practicable.
- (2) The medical practitioner is under a duty to take the sample whether or not the accident hospital patient consents to the taking of the sample.
- (3) If there is no medical practitioner present to attend the accident hospital patient at the hospital, the blood sample is to be taken by a registered nurse who is attending the patient and who is accredited by a hospital as competent to perform the sampling procedures.
- (4) This clause does not require the taking of a sample of blood from an accident hospital patient unless, at the time of the accident concerned, the accident hospital patient was:
 - (a) driving a motor vehicle involved in the accident, or

- (b) occupying the driving seat of a motor vehicle involved in the accident and attempting to put the motor vehicle in motion, or
 - (c) a pedestrian involved in the accident, or
 - (d) driving or riding a vehicle (not being a motor vehicle) involved in the accident, or
 - (e) driving or riding a horse involved in the accident, or
 - (f) the holder of an applicable driver licence and occupying the seat in the motor vehicle next to a learner driver who was driving a motor vehicle involved in the accident.
- (5) A medical practitioner or registered nurse is not required by this clause to take a sample of an accident hospital patient's blood if:
- (a) a sample of the accident hospital patient's blood has already been taken in accordance with this clause by another medical practitioner or nurse, or
 - (b) the medical practitioner or nurse has been informed by a police officer (or has reasonable grounds to believe) that the sample is required to be taken for the purposes of clause 12.
- (6) A blood sample taken under this clause may be used for the purpose of conducting an analysis to determine the concentration of alcohol in the blood.

Note. Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

12 Power to arrest persons involved in fatal accidents for blood and urine tests (cf STM Act, s 24A (2) and (3) and 24B (1) and (2))

- (1) A police officer may exercise the powers referred to in subclause (2) in relation to an accident participant if:
- (a) the accident participant is not an accident hospital patient, and
 - (b) the police officer believes that:
 - (i) the accident is a fatal accident, or
 - (ii) it is more likely than not that a person will die within 30 days as a consequence of the accident.
- (2) A police officer may:
- (a) arrest the accident participant without warrant, and
 - (b) take the accident participant (or cause the accident participant to be taken) with such force as may be necessary to a hospital or prescribed place, and

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- (c) detain the accident participant (or cause the accident participant to be detained) at the hospital or other prescribed place to enable the person to provide blood and urine samples in accordance with this clause.
- (3) A police officer may require an accident participant who has been arrested under subclause (2) to provide samples of the participant's blood and urine (whether or not the participant consents to the samples being taken) in accordance with the directions of an authorised sample taker.
- (4) An authorised sample taker is under a duty to take the sample if the authorised sample taker is informed by the police officer that the sample is required to be taken for the purposes of this clause.
Note. A refusal or failure by the authorised sample taker to take a sample that the authorised sample taker is required to take under this Schedule may constitute an offence against clause 20.
- (5) A blood or urine sample taken under this clause may be used for the purpose of conducting an analysis to determine whether the blood or urine contains a drug.
Note. Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

Division 5 Sobriety assessments and related drug analysis

13 Police officer may require sobriety assessment (cf STM Act, s 25)

- (1) A police officer may require a person to submit to an assessment of the person's sobriety in accordance with the directions of the officer if:
- the person has submitted to a breath test in accordance with Division 2, and
 - the result of the test does not permit the person to be required to submit to a breath analysis.
- (2) A person cannot be required to submit to a sobriety assessment unless:
- a police officer has a reasonable belief that the person may be under the influence of a drug by the way in which the person:
 - is or was driving a motor vehicle on a road, or
 - is or was occupying the driving seat of a motor vehicle on a road and attempting to put the vehicle in motion, and
 - the assessment is carried out by a police officer at or near the place where the person underwent the breath test.

14 Arrest following failure to submit to (or pass) sobriety assessment (cf STM Act, s 26)

If the person refuses to submit to a sobriety assessment under this Division or, after the assessment has been made, a police officer has a reasonable belief that the person is under the influence of a drug, the police officer may:

- (a) arrest that person without warrant, and
- (b) take the person (or cause the person to be taken) with such force as may be necessary to a hospital or a prescribed place and there detain the person (or cause the person to be detained) for the purpose of providing a blood or urine sample in accordance with this Division.

15 Taking samples following arrest (cf STM Act, s 27 (1) and (2))

(1) A police officer may require a person who has been arrested under clause 14 to provide samples of the person's blood and urine (whether or not the person consents to them being taken) in accordance with the directions of an authorised sample taker.

(2) An authorised sample taker is under a duty to take the sample if the authorised sample taker is informed by the police officer that the sample is required to be taken for the purposes of this clause.

Note. A refusal or failure by the authorised sample taker to take a sample that the authorised sample taker is required to take under this Schedule may constitute an offence against clause 20.

(3) A blood or urine sample taken under this clause may be used for the purpose of conducting an analysis to determine whether the blood or urine contains a drug.

Note. Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this clause.

Division 6 Offences relating to testing and sample taking

16 Offences—refusal or failure to submit to test, analysis or assessment (cf STM Act, ss 13 (2) and (3), 15 (4) and (5), 18B (2) and (3) and 29 (1) and (3))

(1) A person must not, when required to do so by a police officer under this Part, refuse or fail:

- (a) to submit to a breath test under Division 2 in accordance with the officer's directions, or
- (b) to submit to a breath analysis under Division 2 in accordance with the officer's directions, or
- (c) to submit to an oral fluid test under Division 3 in accordance with the officer's directions, or

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- (d) to submit to a sobriety assessment under Division 5 in accordance with the officer's directions.

Maximum penalty:

- (a) in the case of a breath test, oral fluid test or sobriety assessment—10 penalty units, or
- (b) in the case of a breath analysis—30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).
- (2) It is a defence to a prosecution for an offence against subclause (1) if the defendant proves to the court's satisfaction that the defendant was unable on medical grounds, at the time the defendant was required to do so, to submit to the test, analysis or assessment concerned.

17 Offences—refusal or failure to provide samples or preventing sample taking (cf STM Act, ss 18D (2) and (3), 18E (9), 22 (2) (a) and (3) (a), 24D (1) (a) and (2) and 29 (2) (a) and (3))

- (1) A person must not, when required to do so by a police officer under this Part, refuse or fail:
- (a) to submit to the taking of a blood sample under this Part in accordance with the directions of the sample taker, or
- (b) to provide an oral fluid sample under Division 3 for an oral fluid analysis in accordance with the directions of the officer, or
- (c) to provide a urine sample in accordance with the directions of the sample taker.

Maximum penalty:

- (a) in the case of an offence against subclause (1) (a) in relation to a requirement to provide a sample under clause 9 or of an offence against subclause (1) (b)—30 penalty units (in the case of a first offence) or 50 penalty units or imprisonment for 18 months or both (in the case of a second or subsequent offence), or
- (b) in any other case—30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).
- (2) A person (other than a secondary participant in an accident) must not, by reason of the person's behaviour, prevent a sample taker from taking a sample of the person's blood for the purposes of clause 11.
- Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).

- (3) A secondary participant in an accident must not, by reason of the person's behaviour, prevent a sample taker from taking a sample of the person's blood for the purposes of clause 11.

Maximum penalty: 30 penalty units.

- (4) It is a defence to a prosecution for an offence against subclause (1) if the defendant proves to the court's satisfaction that the defendant was unable on medical grounds, at the time the person was required to do so, to submit to the taking of the sample or to provide the sample concerned.

- (5) In this clause:

sample taker, in relation to a sample, means an authorised sample taker who is required to take the sample concerned under this Part.

secondary participant in an accident means a person involved in the accident who was:

- (a) a pedestrian, or
- (b) driving or riding a vehicle (other than a motor vehicle or a horse).

18 Offences—wilful introduction or alteration of concentration or amount of alcohol or other drugs (cf STM Act, ss 16, 18G (1)–(3), 22 (2) (b), (3) (b) and (4), 24D (1) (b) and (3) and 29 (2) (b) and (c) and (4))

- (1) A person (other than a secondary participant in an accident) must not wilfully do anything:
- (a) to alter the concentration of alcohol in the person's breath or blood between the time of the event referred to in clause 3 (1) (a), (b) or (c) in respect of which the person has been required by a police officer to submit to a breath test under Division 2 and the time when the person submits to that test, or
 - (b) to alter the concentration of alcohol in the person's breath or blood between the time of the event referred to in clause 3 (1) (a), (b) or (c) in respect of which the person has been required by a police officer to submit to a breath test under Division 2 and the time when the person submits to a breath analysis under that Division, or
 - (c) to introduce, or alter the amount of, any prescribed illicit drug in the person's oral fluid between the time of the event referred to in clause 6 (1) (a), (b) or (c) in respect of which the person has been required by a police officer to submit to an oral fluid test under Division 3 and the time when the person submits to that test, or
 - (d) to introduce, or alter the amount of, any prescribed illicit drug in the person's oral fluid or blood between the time of the event referred to in clause 6 (1) (a), (b) or (c) in respect of which the

person has been required by a police officer to submit to an oral fluid test under Division 3 and the time when the person provides a sample of the person's oral fluid or blood under that Division, or

- (e) in the case of an accident involving the person—to alter the concentration of alcohol in the person's blood (except at the direction or under the supervision of an appropriate health professional) between the time of the accident concerned and the taking of a sample of the person's blood in accordance with Division 4, or
- (f) to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in clause 13 (2) (a) (i) or (ii) in respect of which the person has been required by a police officer to submit to a sobriety assessment and the time when the person submits to that assessment, or
- (g) to introduce, or alter the amount of, a drug in the person's blood or urine between the time of the event referred to in clause 13 (2) (a) (i) or (ii) in respect of which the person has been required by a police officer to submit to a sobriety assessment and the time when the person provides a sample that the person is required to provide under Division 5.

Maximum penalty:

- (a) in the case of an offence against subclause (1) (a), (b), (e), (f) or (g)—30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence), or
 - (b) in the case of an offence against subclause (1) (c) or (d)—30 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (2) A secondary participant in an accident must not do anything to alter the concentration of alcohol in the person's blood (except at the direction or under the supervision of an appropriate health professional) between the time of the accident concerned and the taking of a sample of the person's blood in accordance with clause 11.

Maximum penalty: 30 penalty units.

- (3) It is a defence:
- (a) in the case of the prosecution of a person for an offence against subclause (1) (c)—if the person proves to the court's satisfaction that the thing that the person is accused of doing was done more than 2 hours after the time of the event referred to in clause 6 (1) (a), (b) or (c), or

- (b) in the case of the prosecution of a person for an offence against subclause (1) (d) in relation to oral fluid—if the person proves to the court’s satisfaction that the thing that the person is accused of doing was done more than 2 hours after the time of the event referred to in clause 6 (1) (a), (b) or (c), or
- (c) in the case of the prosecution of a person for an offence against subclause (1) (d) in relation to blood—if the person proves to the court’s satisfaction that the thing that the person is accused of doing was done more than 4 hours after the time of the event referred to in clause 6 (1) (a), (b) or (c), or
- (d) in the case of the prosecution of a person for an offence against subclause (1) (e) or (2) in relation to a non-fatal accident—if the person proves to the court’s satisfaction that the thing that the person is accused of doing was done more than 2 hours after the accident occurred, or
- (e) in the case of the prosecution of a person for an offence against subclause (1) (e) or (2) in relation to a fatal accident—if the person proves to the court’s satisfaction that the thing that the person is accused of doing was done more than 4 hours after the accident occurred, or
- (f) in the case of the prosecution of a person for an offence against subclause (1) (f)—if the person proves to the court’s satisfaction that the thing that the person is accused of doing was done more than 4 hours after the time of the event referred to in clause 13 (2) (a) (i) or (ii).

(4) In this clause:

appropriate health professional means a medical practitioner or registered nurse (or a person belong to a class or description or persons prescribed by the statutory rules) for the proper care and treatment of the person.

secondary participant in an accident means a person involved in the accident who was:

- (a) a pedestrian, or
- (b) driving or riding a vehicle (other than a motor vehicle or a horse).

19 Offences—hindering or obstructing police officers or sample takers (cf STM Act, ss 18G (6) and (7), 22 (1), 24D (6) and 29 (7))

- (1) A person must not hinder or obstruct a police officer in attempting to administer an oral fluid test on, or take a sample of oral fluid from, any other person in accordance with Division 3.

Maximum penalty: 20 penalty units.

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- (2) A person must not hinder or obstruct a sample taker in attempting to take a sample of the blood or urine of any other person in accordance with this Part.

Maximum penalty: 20 penalty units.

- (3) In this clause:

sample taker, in relation to a sample, means an authorised sample taker who is required to take the sample concerned under this Part.

20 Offences—refusal or failure to take sample (cf STM Act, ss 18G (4) (a) and (5), 21, 24D (4) (a) and (5) and 29 (5) (a) and (6))

- (1) An authorised sample taker must not refuse or fail to take a blood or urine sample that the authorised sample taker is required to take under this Part.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence against subclause (1) if the defendant proves to the court's satisfaction that:

- (a) the defendant believed on reasonable grounds that the taking of the sample from the person from whom the sample was to be taken would be prejudicial to the proper care and treatment of the person, or
- (b) the defendant believed on reasonable grounds that the person was less than 15 years of age, or
- (c) the defendant was, because of the behaviour of the person, unable to take the sample, or
- (d) there was other reasonable cause for the defendant not to take the sample.

- (3) Without limiting subclause (2), it is also a defence to a prosecution for an offence against subclause (1) in relation to a failure to take a sample under clause 11 from a person involved in an accident if the defendant proves to the court's satisfaction that:

- (a) the defendant did not believe that the person had attended at or been admitted into the hospital in consequence of an accident involving a vehicle or horse, or
- (b) without limiting paragraph (a), the defendant did not believe on reasonable grounds that the person was a person from whom the defendant was required under clause 11 to take a sample of blood, or
- (c) the requirement that the defendant take a sample of blood from the person arose after the expiration of 12 hours after the accident concerned occurred or the defendant believed on reasonable

grounds that the requirement arose after the expiration of that period, or

- (d) the defendant did not know (and could not with reasonable diligence have ascertained) which of 2 or more persons involved in an accident involving a vehicle or horse was or were a person or persons from whom the defendant was required by clause 11 to take a sample or samples of blood.

Part 3 Requests and applications for additional analysis of samples

21 Request for blood sample to be taken for analysis when person required to submit to breath analysis (cf STM Act, s 18 (1) and (2))

- (1) A person who is required by a police officer under Division 2 of Part 2 to submit to a breath analysis may request the police officer to arrange for an authorised sample taker to take, in the presence of a police officer, a sample of that person's blood, for analysis in accordance with Part 4 to determine the concentration of alcohol in the blood at the person's own expense.

Note. Part 4 provides for the procedures in relation to the taking and analysis of samples taken under this subclause.

- (2) A request by a person under subclause (1), or the taking of a sample of that person's blood, does not excuse that person from the obligation imposed on the person to submit to a breath analysis in accordance with Division 2 of Part 2.

22 Application for additional analysis of blood or oral fluid sample that has already been taken (cf STM Act, ss 18 (5), 18D (5), 18E (5), 23 (3), 24B (5) and 27 (2C))

- (1) A person from whom a blood or oral fluid sample was taken under this Schedule may apply to an authorised laboratory for a portion of the sample to be sent for analysis, at that person's own expense, to a medical practitioner or laboratory nominated by the person.

- (2) An application under subclause (1) must be made:

- (a) in the case of a blood sample—within 12 months after the sample was taken, or
- (b) in the case of an oral fluid sample—within 6 months, or such longer period as may be prescribed by the statutory rules, after the sample was taken.

- (3) In this clause:

authorised laboratory means a laboratory prescribed by the statutory rules for the purposes of this clause.

Part 4 Procedures for taking and analysing samples

Division 1 Preliminary

23 Definitions (cf STM Reg, cl 130 (1) and 130A (1))

In this Part:

prescribed laboratory means a laboratory prescribed by the statutory rules for the purposes of this Part.

security box means a locked security box of a type approved by the Commissioner of Police.

Division 2 Procedures for sample taking

24 Procedures for the taking of blood samples (cf STM Act, ss 18 (3), (4) and (5A), 18E (3), (4) and (5A), 23 (1), (2) and (4)–(6), 24B (3), (4) and (5A) and 27 (2A), (2B) and (2D); STM Reg, cl 130 (1))

- (1) This clause applies in relation to the taking of a blood sample under this Schedule by an authorised sample taker (a *blood sample taker*).
- (2) A blood sample taker must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood.
- (3) The blood sample must be placed in a security box (whether by the blood sample taker, a police officer or a person acting under the direction of the sample taker or officer) as soon as is reasonably practicable after the procedures in subclause (2) have been completed.
- (4) The blood sample must be kept in the security box until it is submitted to a prescribed laboratory for analysis.
- (5) Subject to subclause (7), the blood sample taker must make arrangements for the blood sample to be submitted to a prescribed laboratory for analysis by an analyst to determine:
 - (a) the concentration of alcohol in the blood if that is a purpose for which the sample may be used, or
 - (b) whether the blood contains a prescribed illicit drug if that is a purpose for which the sample may be used, or

- (c) whether the blood contains another drug if that is a purpose for which the sample may be used.

Note. See Part 2 for the purposes for which samples taken under that Part may be used.

- (6) A medical practitioner of another jurisdiction who, under a law of the other jurisdiction that substantially corresponds to clause 11, takes a sample of blood from a person attended by the medical practitioner in consequence of an accident in this jurisdiction may arrange for a portion of the sample to be submitted for an analysis by an analyst to determine the concentration of alcohol in the blood.
- (7) A police officer may make the arrangements referred to in subclause (5) instead of the blood sample taker. The making of such arrangements under this subclause operates to discharge the duty of the blood sample taker under subclause (5) to make those arrangements.
- (8) The following additional provisions apply in relation to a sample taken under clause 11:
 - (a) a police officer may arrange for a blood sample taken from a person under clause 11 to be submitted to a prescribed laboratory for analysis to determine the concentration of alcohol, or of alcohol and other drugs, in the blood,
 - (b) a police officer may not make arrangements under paragraph (a) for analysis of a blood sample to determine the concentration in the person's blood of a drug (other than alcohol) unless:
 - (i) the accident that caused the person to attend at or be admitted to hospital was fatal and the person was a person referred to in clause 11 (4) (a), (b) or (f), or
 - (ii) the officer has reasonable grounds to believe that, at the time of the accident concerned, the person was under the influence of a drug (other than alcohol) and either no police officer attended the scene of the accident or there was no reasonable opportunity for police officers attending the scene to require the person to submit to a sobriety assessment under Division 5 of Part 2.

25 Procedures for the taking of urine samples (cf STM Act, ss 24B (6) and (7) and 27 (3) and (4); STM Reg, cl 130 (1))

- (1) This clause applies in relation to the taking of a urine sample under this Schedule by an authorised sample taker (a *urine sample taker*).
- (2) A urine sample taker must:
 - (a) divide the sample into 2 approximately equal portions, and
 - (b) place each portion into a container, and

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- (c) fasten and seal each container, and
 - (d) mark or label each container for future identification, and
 - (e) hand one of the 2 containers to the person from whom the sample is taken or some other person on behalf of that person, and
 - (f) make appropriate arrangements for the other portion of the sample in the other container to be submitted to a prescribed laboratory for analysis by an analyst.
- (3) The urine sample must be placed in a security box (whether by the urine sample taker, a police officer or a person acting under the direction of the sample taker or officer) as soon as is reasonably practicable after the procedures in subclause (2) have been completed.
 - (4) The urine sample must be kept in the security box until it is submitted to a prescribed laboratory for analysis.
 - (5) Subject to subclause (6), the urine sample taker must make arrangements for the urine sample to be submitted to a prescribed laboratory for analysis by an analyst to determine whether the urine contains a drug if that is a purpose for which the sample may be used.
Note. See Part 2 for the purposes for which samples taken under that Part may be used.
 - (6) A police officer may make the arrangements referred to in subclause (5) instead of the urine sample taker. The making of such arrangements under this subclause operates to discharge the duty of the urine sample taker under subclause (5) to make those arrangements.

26 Procedures for the taking of oral fluid samples (cf STM Act, s 18D (4)–(4B); STM Reg, cl 130A (1))

- (1) A police officer who is provided with an oral fluid sample under clause 8 (1) must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's oral fluid.
- (2) The oral fluid sample must be placed in a security box (whether by the police officer or a person acting under the direction of the officer) as soon as is reasonably practicable after the procedures in subclause (1) have been completed.

- (3) The oral fluid sample must be kept in the security box until it is submitted to a prescribed laboratory for analysis.
- (4) The police officer must make arrangements for the oral fluid sample to be submitted to a prescribed laboratory for an oral fluid analysis.
- (5) A police officer may carry out an oral fluid test on a portion of an oral fluid sample provided under clause 8 (1) before dealing with the remaining portion of the sample in accordance with subclause (1).
- (6) If an oral fluid test is carried out under subclause (5) on a portion of an oral fluid sample, a reference in this clause and clauses 32 and 36 to the sample that is required under subclause (4) to be submitted to a laboratory is taken to be a reference to the remaining portion of the sample.

Division 3 Analysis procedures

27 Conduct of analysis (cf STM Act, ss 18 (6) and (7), 18D (6) and (7), 18E (6) and (8), 23 (7) and (8), 24B (8), (10) and (11) and 27 (5) and (7))

- (1) Subject to subclause (2), an analyst at the laboratory to which a sample is submitted under this Part may carry out an analysis of the sample, or of a portion of the sample, to determine:
 - (a) in the case of a blood sample submitted for alcohol analysis—the concentration of alcohol in the blood, or
 - (b) in the case of a blood sample submitted for drug analysis—whether the blood contains a prescribed illicit drug or other drug (as the case requires), or
 - (c) in the case of an oral fluid sample submitted for an oral fluid analysis—whether the oral fluid contains a prescribed illicit drug, or
 - (d) in the case of a urine sample—whether the urine contains a drug.
- (2) In the case of a blood or urine sample taken for the purposes of clause 12 that has been submitted for analysis, the analyst may carry out an analysis of the sample only if a police officer has notified the analyst in writing that a person involved in the accident that led to the sample of blood or urine being submitted for analysis:
 - (a) has died within 30 days of the accident, or
 - (b) has died during the period beginning 30 days after the accident and ending 12 months after the accident and a medical practitioner has given advice that the person died as a result of the accident.

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- (3) A blood or urine sample of the kind referred to in subclause (2) must be destroyed by or at the direction of the analyst who has custody of the sample without being analysed if, at the expiry of 13 months after the accident concerned, no police officer has made a notification relating to a death under subclause (2).
 - (4) An analysis referred to in subclause (1) may be carried out, and any act, matter or thing in connection with the analysis (including the receipt of the sample to be analysed and the breaking of any seal securing the sample) may be done, by a person acting under the supervision of an analyst, and in that event is taken to have been carried out or done by the analyst.

Division 4 Offences in relation to sample handling

28 Offences—destroying or tampering or interfering with samples (cf STM Reg, cl 130 (2) and (3) and 130A (2))

A person must not destroy or otherwise interfere or tamper with a sample, or a portion of a sample, of a person's blood or urine taken under Part 2 except as follows:

- (a) after the expiration of 13 months (in the case of a sample taken under clause 12) or 12 months (in any other case) commencing on the day the sample was taken,

Note. Clause 27 (3) provides that a blood or urine sample that has been provided under clause 12 must be destroyed by or at the direction of the analyst who has custody of the sample without being analysed if, at the expiry of 13 months after the accident concerned, no police officer has made a notification relating to a death.

- (b) in the case of a sample—by or at the direction of an analyst:
 - (i) so as to permit a portion of the sample to be sent for analysis by a medical practitioner or laboratory nominated, under clause 22, in an application made under that clause by the person from whom the sample was taken, or
 - (ii) in the course of, or on completion of, an analysis of the sample,
- (c) in the case of a portion of a sample—by or at the direction of the medical practitioner or laboratory nominated under clause 22 by the person from whom the sample was taken.

Maximum penalty: 20 penalty units.

29 Offence—failure to comply with sample handling procedures (cf STM Act, ss 18G (4) (b), 23 (1) and (2), 24D (4) (b) and 29 (5) (b))

An authorised sample taker who takes a blood or urine sample for the purposes of a provision of this Schedule must:

- (a) in the case of a blood sample—comply with the requirements of clause 24 (2) and (3), or
- (b) in the case of a urine sample—comply with the requirements of clause 25 (2) and (3).

Maximum penalty: 20 penalty units.

30 Offence—use of samples for non-drug testing purposes (cf STM Act, s 18H)

- (1) A person must not intentionally or recklessly:
 - (a) supply a drug testing sample (or cause or permit a drug testing sample to be supplied) to a person for analysis for a non-drug testing purpose, or
 - (b) carry out an analysis (or cause or permit an analysis to be carried out) of a drug testing sample for a non-drug testing purpose, or
 - (c) include information on a DNA database (or cause information to be included on a DNA database) if that information has been derived from an analysis of a drug testing sample for a non-drug testing purpose.

Maximum penalty: 30 penalty units.

Note. For example, deriving a DNA profile from the sample is a non-drug testing purpose.

- (2) In this clause:

DNA database means any database containing DNA data that is kept under a law of this or any other jurisdiction, and includes any DNA database system within the meaning of the *Crimes (Forensic Procedures) Act 2000*.

drug testing sample means a sample of oral fluid or blood taken from, or furnished or provided by, a person under Division 3 of Part 2.

non-drug testing purpose, in relation to the analysis of a drug testing sample, means a purpose other than determining whether any prescribed illicit drugs are present in the sample.

Part 5 Evidential matters

Division 1 Admission of evidence concerning presence of alcohol or other drugs

31 Evidence of alcohol concentration in proceedings for offences against section 110 (cf STM Act, s 32)

- (1) This clause applies to any proceedings for an offence against section 110 (Presence of prescribed concentration of alcohol in person's breath or blood).
- (2) Evidence may be given in proceedings to which this clause applies of the concentration of alcohol present in the breath or blood of the person charged as determined by:
 - (a) a breath analysing instrument operated by a police officer authorised to do so by the Commissioner of Police, or
 - (b) an analysis of the person's blood under this Schedule.
- (3) In any such proceedings, the concentration of alcohol so determined is taken to be the concentration of alcohol in the person's breath or blood at the time of the occurrence of the relevant event referred to in clause 3 (1) (a), (b) or (c) if the breath analysis was made, or blood sample taken, within 2 hours after the event unless the defendant proves that the concentration of alcohol in the defendant's breath or blood at the time concerned was:
 - (a) in the case of an offence against section 110 (1)—zero grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
 - (b) in the case of an offence against section 110 (2)—less than 0.02 grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
 - (c) in the case of an offence against section 110 (3)—less than 0.05 grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
 - (d) in the case of an offence against section 110 (4)—less than 0.08 grams of alcohol in 210 litres of breath or 100 millilitres of blood, or
 - (e) in the case of an offence against section 110 (5)—less than 0.15 grams of alcohol in 210 litres of breath or 100 millilitres of blood.
- (4) Nothing in subclause (3) affects the operation of section 110 (6) and (7).

32 Evidence of presence of drugs in proceedings for offences against section 111 (cf STM Act, ss 33A and 33C)

- (1) This clause applies to any proceedings for an offence against section 111 (Presence of certain drugs (other than alcohol) in oral fluid, blood or urine).
- (2) In proceedings to which this clause applies in relation to a prescribed illicit drug:
 - (a) evidence may be given of the presence of a prescribed illicit drug in the oral fluid of the person charged as determined by an oral fluid analysis under this Schedule of a sample of the person's oral fluid, and
 - (b) the presence of a prescribed illicit drug in a person's oral fluid so determined is taken to show the presence of the drug at the time of the occurrence of the relevant event referred to in section 111 (1) (a), (b) or (c) if the oral fluid sample analysed was provided within 2 hours after the event, unless the defendant proves the absence of the drug when the event occurred.
- (3) In proceedings to which this clause applies:
 - (a) evidence may be given of the presence of a prescribed illicit drug, morphine or cocaine in the blood or urine of the person charged as determined by an analysis of the person's blood or urine under this Schedule, and
 - (b) the drug the presence of which is so determined is taken to be so present at the time of the occurrence of the relevant event referred to in section 111 (1) (a), (b) or (c) or (3) (a), (b) or (c) if the blood or urine sample was taken within 4 hours after the event, unless the defendant proves the absence of the drug when the event occurred.

33 Evidence of presence of drugs in proceedings for offences against section 112 (cf STM Act, s 34)

- (1) This clause applies to any proceedings for an offence against section 112 (1) (Use or attempted use of a vehicle under the influence of alcohol or any other drug).
- (2) In proceedings to which this clause applies:
 - (a) evidence may be given of the presence of a drug, or the presence of a particular concentration of drug, in the blood or urine of the person charged, as determined pursuant to an analysis under this Schedule of a sample of the person's blood or urine, and
 - (b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined

(as the case may be) is to be taken to have been present in the blood or urine of that person when the event referred to in section 112 (1) (a) or (b) (as the case may be) occurred if the sample was taken within 4 hours after the event, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, when the event occurred.

34 Evidence of test or analysis and related facts not admissible in insurance cases to prove intoxication or drug use (cf STM Act, s 37)

- (1) For the purposes of any contract of insurance, any of the following facts are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle:
 - (a) the fact that a person has submitted to a breath test or breath analysis under this Schedule,
 - (b) the result of a breath test or breath analysis,
 - (c) the fact that a person has submitted to an oral fluid test or provided a sample for oral fluid analysis under this Schedule,
 - (d) the result of an oral fluid test or oral fluid analysis,
 - (e) the fact that a person has been convicted of an offence against any of the following provisions:
 - (i) section 110,
 - (ii) section 111,
 - (iii) clause 16,
 - (iv) clause 17,
 - (v) clause 18.
- (2) For the purposes of any contract of insurance, the results of any analysis of blood or urine under this Schedule are not admissible as evidence of the fact that a person was at any time under the influence of or in any way affected by intoxicating liquor or any other drug or incapable of driving or of exercising effective control over a vehicle or horse.
- (3) Nothing in subclause (1) or (2) precludes the admission of any other evidence to show a fact referred in the subclause.
- (4) The provisions of this clause have effect despite anything contained in any contract of insurance.
- (5) Any covenant, term, condition or provision in any contract of insurance is void:
 - (a) to the extent that the operation of this clause is excluded, limited, modified or restricted, or

- (b) to the extent that it purports to exclude or limit the liability of the insurer in the event of any person being convicted of:
 - (i) an offence against section 110 or 111 (1) or (3), or
 - (ii) an offence against a provision of Part 2.
- (6) However, nothing in subclause (5) precludes the inclusion in a contract of insurance of any other covenant, term, condition or provision under which the liability of the insurer is excluded or limited.

Division 2 Certificate evidence

35 Certificate evidence about breath analysing instruments (cf STM Act, s 33 (1)–(3))

- (1) This clause applies to any of the following proceedings:
 - (a) proceedings for an offence against section 110 (Presence of prescribed concentration of alcohol in person's breath or blood),
 - (b) proceedings for an offence against clause 3 (4), 16 (1) (a) or (b) or 18 (1) (a) or (b).
- (2) A certificate purporting to be signed by a police officer certifying the following particulars is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in or by the certificate:
 - (a) the officer is authorised by the Commissioner of Police to operate breath analysing instruments,
 - (b) a person named in the certificate submitted to a breath analysis,
 - (c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of this Act,
 - (d) the analysis was made on the day and completed at the time stated in the certificate,
 - (e) a concentration of alcohol determined by that breath analysing instrument and expressed in grams of alcohol in 210 litres of breath or 100 millilitres of blood was present in the breath or blood of that person on the day and at the time stated in the certificate,
 - (f) a statement in writing required by clause 5 (3) was delivered in accordance with that subclause.
- (3) A certificate purporting to be signed by the Commissioner of Police that the police officer named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate.

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- (4) Evidence of the condition of a breath analysing instrument, or of the manner in which it was operated, is not required in proceedings to which this clause applies unless evidence sufficient to raise doubt that the instrument was in proper condition and properly operated has been adduced.

36 Certificate evidence about the taking and analysis of samples (cf STM Act, ss 33 (4)–(7), 33B, 33D and 35)

(1) **Proceedings to which clause applies**

This clause applies to any of the following proceedings:

- (a) proceedings for an offence against section 110 (Presence of prescribed concentration of alcohol in person's breath or blood),
- (b) proceedings for an offence against section 111 (Presence of certain drugs (other than alcohol) in oral fluid, blood or urine),
- (c) proceedings for an offence against section 112 (1) (Use or attempted use of a vehicle under the influence of alcohol or any other drug).

(2) **Certificates from sample takers**

A certificate purporting to be signed by an authorised sample taker (the *certifier*) certifying any one or more of the following matters is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate:

- (a) that the certifier was an authorised sample taker who attended a specified person,
- (b) that the certifier took a sample of the person's blood or urine in accordance with this Schedule, and any relevant provisions of the statutory rules, on the day and at the time stated in the certificate,
- (c) that the certifier dealt with the sample in accordance with this Schedule and any relevant provisions of the statutory rules,
- (d) that the certifier used equipment of a specified description in so taking and dealing with the sample,
- (e) that the container was sealed, and marked or labelled, in a specified manner.

(3) A certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate:

- (a) that the officer took a sample of the oral fluid of the person named in the certificate in accordance with this Schedule, and any

relevant provisions of the statutory rules, on the day and at the time stated in the certificate,

- (b) that the officer dealt with the sample in accordance with this Schedule and any relevant provisions of the statutory rules,
- (c) that the container was sealed, and marked or labelled, in a specified manner,
- (d) that the officer arranged for the sample to be submitted for oral fluid analysis to determine the presence of any prescribed illicit drugs in the oral fluid.

(4) **Certificates from police officers about arrangements for analysis**

A certificate purporting to be signed by a police officer certifying any one or more of the following matters is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate:

- (a) that the officer received a sample of a specified person's blood or urine in accordance with this Schedule for submission to a prescribed laboratory for analysis,
- (b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine the concentration of alcohol in the sample or the presence or concentration of another drug in the sample (as the case requires),
- (c) that the sample was in a container which was sealed, or marked or labelled, in a specified manner.

(5) **Certificates from analysts**

A certificate purporting to be signed by an analyst certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a sample of a specified person's blood, urine or oral fluid in a container submitted for analysis under this Schedule,
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
- (c) that on receipt by the analyst of the container, the seal was unbroken,
- (d) in the case of an analysis of a blood sample carried out to determine the concentration of alcohol in the blood of the specified person:
 - (i) that the analyst carried out an analysis of the sample to determine the concentration of alcohol in the sample, and

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- (ii) that the concentration of alcohol determined pursuant to the analysis and expressed in grams of alcohol in 100 millilitres of blood was present in that sample,
 - (e) in the case of an analysis of a blood or urine sample carried out to determine the presence or concentration of a prescribed illicit drug or other drug in the blood or urine of the specified person:
 - (i) that the analyst carried out an analysis of the sample to determine whether any prescribed illicit drug or other drug (as the case requires) was present in the sample, and
 - (ii) that a specified prescribed illicit drug or other drug (as the case requires) ascertained pursuant to the analysis was present in that sample and, if so certified, was present in that sample in a specified concentration,
 - (f) in the case of an oral fluid analysis carried out on the oral fluid of the specified person:
 - (i) that the analyst carried out an oral fluid analysis of the sample to determine the presence of any prescribed illicit drugs in the sample, and
 - (ii) that a specified prescribed illicit drug was determined pursuant to the oral fluid analysis to be present in that sample,
 - (g) that the analyst was, at the time of the analysis, an analyst within the meaning of this Schedule,
is admissible and is prima facie evidence:
 - (h) of the particulars certified in and by the certificate, and
 - (i) that the sample was a sample of the blood, urine or oral fluid of that specified person, and
 - (j) that the sample had not been tampered with before it was received by the analyst.
- (6) **Certificates from interstate sample takers and analysts**
- A certificate purporting to be signed by an interstate sample taker or interstate analyst in accordance with a provision of a law of another jurisdiction that substantially corresponds to the relevant provisions of this Schedule concerning sample taking or analysis is admissible in proceedings to which this clause applies and is prima facie evidence of the particulars certified in and by the certificate.
- (7) An analysis to which a certificate referred to in subclause (6) relates is taken to be an analysis under this Schedule.

(8) **Special provisions regarding proceedings for offences against section 112**

Subclauses (1)–(3):

- (a) do not apply to proceedings for an offence against section 112 (1) brought on a charge that, by the operation of clause 40 (1), cannot be laid, and
- (b) do not enable evidence to be given of or in relation to:
 - (i) the presence of a drug other than alcohol, or
 - (ii) the presence of a particular concentration of a drug other than alcohol,in the blood of a person charged with an offence against section 112 (1), as determined by an analysis under this Schedule, unless the court is satisfied that the analysis was not arranged in contravention of clause 24 (8).

(9) **Definitions**

In this clause:

interstate analyst means a person who analyses a blood, urine or oral fluid sample in another jurisdiction.

interstate sample taker means a person who takes a blood, urine or oral fluid sample in another jurisdiction.

37 Certificate evidence may specify minimum concentrations (cf STM Act, s 36)

- (1) This clause applies to a certificate under this Part if:
 - (a) evidence is given by the certificate in proceedings in which evidence is permitted to be given of the results of an analysis undertaken for the purposes of this Act of a sample of a person's blood or urine, and
 - (b) the certificate is to the effect that alcohol or another specified drug was found by the analysis to be present in the sample in a concentration not less than a specified concentration.
- (2) A certificate to which this clause applies is to be treated as though it stated that the concentration of alcohol or of the other drug concerned was determined by the analysis to be present in the specified minimum concentration.
- (3) Evidence given by a certificate to which this clause applies is not open to challenge on the basis that the analysis, merely because it purports to determine a concentration in terms of a minimum, does not meet the requirements of this Act.

Part 6 Miscellaneous

38 Police may conduct random breath and oral fluid testing at same time

(cf STM Act, s 39A)

- (1) Nothing in this Act prevents a police officer requiring a person to submit to both breath testing and oral fluid testing.
- (2) If a police officer requests or signals a driver of a motor vehicle to stop for the purpose of both clause 3 (Power to conduct random breath testing) and clause 6 (Power to conduct random oral fluid testing) and the driver fails to comply with the request or signal, the driver may be convicted of an offence against clause 3 (4) or an offence against clause 6 (3), but not both.

39 Use of samples for accident research (cf STM Act, s 73)

- (1) If a sample of blood is provided in accordance with clause 11:
 - (a) the sample or any part of it, and
 - (b) any sample of saliva voluntarily provided at the same time,may be used in any research program that is related to safety and has been approved by the Minister.
- (2) The results of research carried out under this clause with respect to the blood or saliva of a person are not admissible as evidence of the presence of any drug in the blood or saliva of the person.
- (3) A person who carries out research under this clause with respect to blood or saliva must not carry out the research in such a way as identifies the person who provided the blood or saliva.
Maximum penalty: 20 penalty units.

40 Double jeopardy in relation to alcohol and other drug offences (cf STM Act, s 38)

- (1) A person is not liable to be convicted of both an offence against section 112 (1) and a related alcohol or drug offence if the offences arose directly or indirectly out of the same circumstances.
- (2) A person who:
 - (a) is required by a police officer to submit to a breath test by reason of the occurrence of an event referred to in clause 3 (1) (a), (b) or (c) and, as a consequence of that test, to submit to a breath analysis, and
 - (b) submits to the breath analysis in accordance with the directions of a police officer,

cannot be charged with any of the following offences against section 112 (1):

- (c) the offence of driving a motor vehicle, at the time of that event, while the person was under the influence of intoxicating liquor,
 - (d) the offence of occupying the driving seat of a motor vehicle and attempting to put such motor vehicle in motion, at the time of that event, while the person was under the influence of intoxicating liquor.
- (3) A person who has had a sample of blood taken in accordance with clause 11 because of an accident is not to be charged with an offence against section 112 (1) if it is alleged as a component of the offence that the person was under the influence of alcohol and the offence relates to the same accident.
- (4) In this clause:
related alcohol or drug offence means an offence against any of the following provisions:
- (a) section 110,
 - (b) section 111,
 - (c) clause 16,
 - (d) clause 17,
 - (e) clause 18.

41 Personal liability for good faith taking of samples (cf STM Act, s 39)

- (1) An authorised sample taker does not incur any civil or criminal liability in respect of anything properly and necessarily done by the sample taker in the course of taking a sample of blood or urine from a person for the purpose of its being used by an analyst to detect the presence of any drug if the authorised sample taker:
- (a) believed on reasonable grounds that the authorised sample taker was required under this Schedule to take the sample of blood or urine from the person, or
 - (b) believed on reasonable grounds that the person was involved in an accident (whether in this jurisdiction or elsewhere) and the authorised sample taker did not know, and could not with reasonable diligence have ascertained, whether or not the authorised sample taker was required to take the sample from the person under Division 4 of Part 2, or
 - (c) was informed by a police officer that the person was a person from whom the sample taker was required under this Schedule to take the sample of blood or urine.

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- (2) Subclause (1) extends to any person acting under the supervision of the sample taker as referred to in clause 42.
 - (3) This clause applies despite section 275.

42 Supervisee may perform functions of medical practitioner, nurse or prescribed sample taker (cf STM Act, ss 18E (7), 24, 24B (9) and 27 (6))

- (1) Any duty of an authorised sample taker under this Schedule and any relevant provisions of the statutory rules may be performed by a person acting under the supervision of the authorised sample taker.
- (2) A duty performed by any such person is taken to have been performed by the authorised sample taker.

Schedule 4 Savings, transitional and other provisions

Part 1 General

1 Statutory rules

- (1) The statutory rules may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act or any Act that amends this Act
Road Transport Legislation (Repeal and Amendment) Act 2013
Road Transport (Statutory Rules) Act 2013
- (2) If the statutory rules so provide, any such provision may:
 - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule), and
 - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person on and from the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Statutory rules made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

Part 2 Provisions consequent on enactment of this Act and cognate Acts

Division 1 Interpretation

2 Definitions

(1) In this Part:

cognate Act means any of the following:

- (a) the *Road Transport Legislation (Repeal and Amendment) Act 2013*,
- (b) the *Road Transport (Statutory Rules) Act 2013*.

continued statutory rule—see clause 8.

former registration charges legislation means any of the following:

- (a) Part 2A of the *Road Transport (Vehicle Registration) Act 1997*,
- (b) the regulations made for the purposes of that Part.

former road transport Act means each of the following Acts:

- (a) the *Road Transport (Driver Licensing) Act 1998*,
- (b) the *Road Transport (General) Act 2005*,
- (c) the *Road Transport (Safety and Traffic Management) Act 1999*,
- (d) the *Road Transport (Vehicle Registration) Act 1997*.

Note. See section 4 (4) concerning the construction of references to the *Road Transport (General) Act 2005*.

former road transport legislation means the road transport legislation (within the meaning of the *Road Transport (General) Act 2005*).

modification includes addition, exception, omission or substitution.

new road transport legislation means the road transport legislation (within the meaning of this Act), including any statutory rules that are taken to have been made under this Act.

pre-amended related provision means a provision of an Act or statutory rule that is amended by a cognate Act as in force immediately before the provision was amended.

repeal day means the day on which Schedule 1 (Repeal of certain existing road transport legislation) to the *Road Transport Legislation (Repeal and Amendment) Act 2013* commences.

(2) For the purposes of this Part:

- (a) a provision of the new road transport legislation is a **corresponding provision** in relation to a provision of the former road transport legislation if the provision of the new road

- transport legislation corresponds (or substantially corresponds) to the provision of the former road transport legislation, and
- (b) a function conferred or imposed by the new road transport legislation is a ***corresponding function*** in relation to a function conferred or imposed by the former road transport legislation if the function conferred or imposed by the new road transport legislation corresponds (or substantially corresponds) to the function conferred or imposed by the former road transport legislation.
- (3) For the purposes of this Part, a reference to the ***unexpired balance of its period of duration*** in relation to a period for a matter or other thing under the former road transport legislation that commenced before the repeal day is a reference to the unexpired or uncompleted part of the original period calculated from the beginning of the repeal day.

3 References to former road transport legislation and related matters

- (1) Unless the context or subject-matter otherwise indicates or requires:
 - (a) a reference in any other provision of this Part to the former road transport legislation is a reference to that legislation as in force immediately before the repeal day, and
 - (b) a reference in any other provision of this Part to an Act or statutory rule (or a provision of an Act or statutory rule) that formed part of the former road transport legislation is a reference to that Act, rule or provision as in force immediately before the repeal day.
- (2) Unless the context or subject-matter otherwise indicates or requires:
 - (a) a reference (however expressed) in any other provision of this Part to a person, body, instrument, matter or thing having a particular status or effect under, or for the purposes of, any former road transport legislation (or a provision of that legislation) is a reference to that person, body, instrument, matter or thing having that status or effect immediately before the repeal day, and
 - (b) a reference (however expressed) in any other provision of this Part to a right, entitlement, power, authority, duty or obligation under any former road transport legislation (or a provision of that legislation) is a reference to any such right, entitlement, power, authority, duty or obligation in existence immediately before the repeal day.

4 Continued matters or things may be dealt with under new road transport legislation accordingly

- (1) This clause applies to any matter or thing (a *continued matter or thing*) that is:
 - (a) approved, maintained, issued or made under the former road transport legislation, and
 - (b) continued in force or effect, or taken to be a matter or thing, by a provision of this Part for the purposes of the new road transport legislation (or a specified provision of that legislation).
- (2) A continued matter or thing may be amended, repealed, revoked, replaced, reissued, renewed, suspended, cancelled or otherwise dealt with under the new road transport legislation as if it had been approved, maintained, issued or made under the new road transport legislation.
- (3) A continued matter or thing that was subject to any conditions imposed by or under the former road transport legislation is subject to the same conditions under the new road transport legislation.
- (4) A continued matter or thing that would have been in force or had effect under the former road transport legislation for a specified period ceases to be in force or have effect under the new road transport legislation at the same time as it would have ceased to be in force or have effect under the former road transport legislation.
- (5) This clause has effect unless the context or subject-matter otherwise indicates or requires.

5 Certain savings and transitional provisions take effect on and from repeal day

- (1) A provision of this Part that provides that a specified person, body, instrument, matter, thing, right, entitlement, power, authority, duty or obligation is taken to have a specified effect or status for the purposes of the new road transport legislation (or an Act or instrument forming part of, or a provision of that, legislation) operates to confer that effect or status on and from the repeal day.
- (2) This clause has effect unless the context or subject-matter otherwise indicates or requires.

Division 2 Continuing operation of former road transport legislation and pre-amended related provisions

6 Former road transport legislation and other related matters continue to apply in certain circumstances

- (1) The former road transport legislation, any declarations or orders made under that legislation and any pre-amended related provisions continue to apply with respect to the following matters as if this Act and each cognate Act had not been enacted:
- (a) an offence or alleged offence against the former road transport legislation or any pre-amended related provision,
 - (b) any proceedings for any such offence,
 - (c) any penalty notice, fine enforcement order, penalty notice enforcement order or court enforcement order that is in force in respect of an offence against the former road transport legislation or pre-amended related provision,
 - (d) any appeal that is pending in a court (or any entitlement to appeal to a court that has not been exercised) in respect of a matter arising under the former road transport legislation,
 - (e) any breath test, breath analysis, oral fluid test or oral fluid analysis conducted under the former road transport legislation,
 - (f) any breath, blood, urine or oral fluid sample taken under the former road transport legislation,
 - (g) any vehicle taken charge of or removed by a police officer under section 31 or 75 of the *Road Transport (Safety and Traffic Management) Act 1999* that has not been returned before the repeal day,
 - (h) an unattended motor vehicle or trailer removed under section 76 of the *Road Transport (Safety and Traffic Management) Act 1999*,
 - (i) any compensation order made under Division 1 of Part 5.5 of the *Road Transport (General) Act 2005* made before the repeal day,
 - (j) any breaches of, or other non-compliance with, the provisions of Chapter 3 of the *Road Transport (General) Act 2005* occurring before the repeal day,
 - (k) any direction or notice given under a provision of the former road transport legislation requiring a matter or thing to be done (whether before, on or after the repeal day),
 - (l) any other matter or thing arising under or in connection with the former road transport legislation that is prescribed by the statutory rules.

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- (2) This clause is subject to any contrary provision in this Schedule.

Division 3 Application of road transport legislation

7 Orders under sections 15 and 16 of Road Transport (General) Act 2005

- (1) Any order in force under section 15 of the *Road Transport (General) Act 2005* is taken to be an order in force under section 18 of this Act.
- (2) Any order in force under section 16 of the *Road Transport (General) Act 2005* is taken to be an order in force under section 19 of this Act.
- (3) Any order that is continued in force by operation of this clause has effect subject to the following:
 - (a) in the case of an order that had effect in relation to all of the former road transport legislation—the order has effect under this Act in relation to the whole of the new road transport legislation,
 - (b) in the case of an order that had effect in relation to specified provisions of the former road transport legislation—the order has effect under this Act in relation to the corresponding provisions (if any) of the new road transport legislation.
- (4) Any database that is a database of declarations and orders for the purposes of section 18 of the *Road Transport (General) Act 2005* is taken to be a database of declarations and orders for the purposes of section 22 of this Act.

Division 4 Statutory rules

8 Certain existing statutory rules taken to be made under this Act

- (1) For the purposes of this Part, each of the following statutory rules is a *continued statutory rule*:
 - (a) the *Road Rules 2008*,
 - (b) the *Road Transport (Driver Licensing) Regulation 2008*,
 - (c) the *Road Transport (Vehicle Registration) Regulation 2007*.
- (2) Each continued statutory rule is taken to be a regulation or rules (as the case requires) made by the Governor under this Act.
- (3) Any statutory rule made under a former road transport Act (other than the *Road Transport (General) Act 2005*) before the repeal day (a *continued amending statutory rule*) that amends a continued statutory rule with effect on or after that day is taken to have been made by the Governor under this Act, and operates to amend the continued statutory rule accordingly.

- (4) Subject to the statutory rules, any reference to a repealed provision of the former road transport legislation that is inserted in a continued statutory rule by a continued amending statutory rule is taken to be a reference to the corresponding provision (if any) of the new road transport legislation.

9 Road Transport (General) Regulation 2013

- (1) Schedule 3 to the *Road Transport (Statutory Rules) Act 2013* is taken to be and has effect as a regulation made by the Governor under this Act.
- (2) Part 2 of the *Subordinate Legislation Act 1989* does not apply to the regulation set out in Schedule 3 to the *Road Transport (Statutory Rules) Act 2013* (but applies to any amendment or repeal of the regulation).
- (3) For the purposes of section 10 of the *Subordinate Legislation Act 1989*, the regulation set out in Schedule 3 to the *Road Transport (Statutory Rules) Act 2013* is taken to have been published on the repeal day.
- (4) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the regulation set out in Schedule 3 to the *Road Transport (Statutory Rules) Act 2013* (but apply to any amendment or repeal of the regulation).

Note. The continued effect of the regulation set out in Schedule 3 to the *Road Transport (Statutory Rules) Act 2013* is unaffected by the repeal of that Schedule. See section 30 of the *Interpretation Act 1987*.

Division 5 Driver licensing

10 Existing fees

Any fee in force under section 10 of the *Road Transport (Driver Licensing) Act 1998* is taken to be a fee fixed under section 271 of this Act.

11 Mutual recognition duties

Any duty of the Authority to take action under section 11 of the *Road Transport (Driver Licensing) Act 1998* is taken to be a duty to take the same action under section 29 of this Act.

12 Existing driver licences

- (1) For the purposes of this clause, an **existing driver licence** means:
- a driver licence in force under the *Road Transport (Driver Licensing) Act 1998* and the regulations under that Act, and
 - a driver licence that has been suspended (but not cancelled) under that Act and those regulations.

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- (2) An existing driver licence has effect for the unexpired balance of its period of duration as if it had been issued under the corresponding provisions of this Act and the statutory rules, and may be renewed, varied, cancelled or suspended in all respects as though it were a driver licence issued under this Act and the statutory rules.
 - (3) Subject to this Part and the statutory rules, an existing driver licence continues in effect as a driver licence under this Act of the same class as it was (and subject to the same conditions to which it was subject) under the *Road Transport (Driver Licensing) Act 1998* and the regulations under that Act.

13 Existing disqualifications, suspensions and good behaviour undertakings

- (1) Any notice of licence suspension or notice of licence ineligibility that:
 - (a) is in force under Division 2 of Part 2 of the *Road Transport (Driver Licensing) Act 1998*, and
 - (b) specified a date for the suspension or ineligibility to take effect that is on or after the repeal day,is taken to be a notice in force under the corresponding provisions of Part 3.2 of this Act.
- (2) Any election to be of good behaviour as alternative to licence suspension or licence ineligibility that has effect under Division 2 of Part 2 of the *Road Transport (Driver Licensing) Act 1998* is taken to have effect as an election under the corresponding provisions of Part 3.2 of this Act.
- (3) Any period of driver licence suspension, period of licence ineligibility or period of good behaviour that has effect in relation to a person under Division 2 of Part 2 of the *Road Transport (Driver Licensing) Act 1998* is taken to be a period of licence suspension, period of licence ineligibility or period of good behaviour that applies to the person under the corresponding provisions of Part 3.2 of this Act for the unexpired balance of its period of duration.

14 Existing demerit points

- (1) Without limiting clause 33, a person who incurred, or against whom demerit points are recorded, under the *Road Transport (Driver Licensing) Act 1998* is taken to have incurred those demerit points under this Act.
- (2) Accordingly, any such demerit points may be taken into account for the purposes of the provisions of Part 3.2 of this Act.

- (3) Any notice in force under section 15 of the *Road Transport (Driver Licensing) Act 1998* is taken to be a notice in force under section 32 of this Act.

15 Interlock devices

- (1) Any interlock device that is an approved interlock device for the purposes of section 21A of the *Road Transport (Driver Licensing) Act 1998* is taken to be an approved interlock device for the purposes of section 45 of this Act.
- (2) Any person who is an approved interlock installer for the purposes of section 21B of the *Road Transport (Driver Licensing) Act 1998* is taken to be a person who has been approved as an approved interlock installer for the purposes of section 46 of this Act.
- (3) Any person who is an approved interlock service provider for the purposes of section 21B of the *Road Transport (Driver Licensing) Act 1998* is taken to be a person who has been approved as an approved interlock service provider for the purposes of section 46 of this Act.
- (4) Any scheme in effect under section 21D of the *Road Transport (Driver Licensing) Act 1998* is taken to be a scheme in effect under section 48 of this Act.

16 Cancellation or suspension of driver licences for speeding offences and other matters

- (1) Section 59 of this Act extends to speeding offences (within the meaning of section 33 of the *Road Transport (Driver Licensing) Act 1998*) committed before the repeal day.
- (2) Any other period of licence suspension that has effect in relation to a person under section 33 of the *Road Transport (Driver Licensing) Act 1998* or the regulations under that Act is taken to be a period of licence suspension that applies to the person under the corresponding provisions of this Act and the statutory rules for the unexpired balance of its period of duration.

Division 6 Vehicle registration

17 Existing registered vehicles

- (1) Any vehicle that is registered in this jurisdiction for the purposes of the *Road Transport (Vehicle Registration) Act 1997* is taken to be registered in this jurisdiction for the purposes of this Act.
- (2) The period of registration under this Act for any such vehicle is taken to be the unexpired balance of the duration of the registration period for the vehicle under the *Road Transport (Vehicle Registration) Act 1997*.

18 Existing labels and plates and special number-plate arrangements

- (1) Any label or plate that has effect for the purposes of any provisions of the *Road Transport (Vehicle Registration) Act 1997* or the regulations made under that Act is taken to have effect as a label or plate for the purposes of any corresponding provisions of this Act and the statutory rules.
- (2) If any such label or plate has effect for the purposes of any provision of the *Road Transport (Vehicle Registration) Act 1997* or the regulations made under that Act for a period, the period during which the label or plate is taken to have effect under this Act is the unexpired balance of the period of its duration.
- (3) Any special number-plate arrangements under section 8A of the *Road Transport (Vehicle Registration) Act 1997* are taken to be special number-plate arrangements under section 66 of this Act.

19 Existing unregistered vehicle permits

Any permit that is an unregistered vehicle permit for the purposes of the *Road Transport (Vehicle Registration) Act 1997* is taken to be an unregistered vehicle permit for the purposes of this Act for the unexpired balance of the period of its duration.

20 References to registration under Road Transport (Vehicle Registration) Act 1997

- (1) Any reference (however expressed) in any other Act or instrument made under any Act or any other instrument of any kind to the registration of a vehicle under the *Road Transport (Vehicle Registration) Act 1997* (or the regulations made under that Act) is taken to be a reference to the registration of a vehicle under this Act.
- (2) This clause does not apply to the *Motor Vehicles (Third Party Insurance) Act 1942* or other provisions of any other Act or statutory rule prescribed by the statutory rules.

21 Seizures under section 27 of Road Transport (Vehicle Registration) Act 1997

Section 27 of the *Road Transport (Vehicle Registration) Act 1997* continues to apply to any vehicle seized under that section before its repeal as if that section had not been repealed.

22 Existing directions and defect notices continue to have effect

A person to whom a direction or defect notice has been given under section 22B or 26 of the *Road Transport (Vehicle Registration) Act 1997* remains under a duty to comply with that direction or notice despite the repeal of that section.

23 Written-off vehicles

- (1) Any vehicle that was a statutory written-off vehicle for the purposes of Part 2AA of the *Road Transport (Vehicle Registration) Act 1997* continues to be a statutory written-off vehicle for the purposes of Part 4.5 of this Act.
- (2) Any vehicle that was a former written-off vehicle for the purposes of Part 2AA of the *Road Transport (Vehicle Registration) Act 1997* continues to be a former written-off vehicle for the purposes of Part 4.5 of this Act.
- (3) The provisions of clause 24 of Schedule 3 to the *Road Transport (Vehicle Registration) Act 1997* continue to apply in relation to the requirements under Part 4.5 of this Act that correspond to the requirements under the *Road Transport (Vehicle Registration) Act 1997*.
- (4) A vehicle that is recorded on the NSW written-off vehicles register under Part 4.5 of this Act as a former written-off vehicle may also be referred to as a repairable written-off vehicle.

Division 7 Fees, taxes and charges

24 Existing unpaid fees and charges

- (1) Any fees or charges owing to the Authority under the former road transport Acts are taken to be owing to the Authority under this Act.
- (2) Subclause (1) does not apply to registration charges or administrative fees payable under the former registration charges legislation.

25 Heavy vehicle registration charges and administrative fees

- (1) Any applicable registration charges or administration fees under the former registration charges legislation that were paid in respect of a registration or renewal of registration of a vehicle before the repeal day for a registration period ending after that day are taken to be registration charges or administrative fees paid under Schedule 2 for the vehicle for the unexpired balance of the duration of the registration period.
- (2) Any registration charges or administrative fees payable under the former registration charges legislation in respect of the registration or renewal of registration of a vehicle continue to be payable in accordance with that legislation despite the repeal of that legislation.
- (3) Any registration charges or administrative fees referred to in subclause (2) that are paid on or after the repeal for a registration period ending after that day are taken to be registration charges or

administrative fees paid under Schedule 2 for the vehicle for the unexpired balance of the duration of the registration period.

- (4) Any exemption, approval, direction, request, certificate or other matter or thing made, given or done under the former registration charges legislation in respect of a vehicle to which subclause (1) or (2) applies continues in force in relation to the vehicle, but may be revoked or varied in accordance with this Act.
- (5) Any registration charges or administrative fees payable under the former registration charges legislation that are paid on or after the repeal day are to be paid into the Consolidated Fund. However, clause 20 of Schedule 2 extends to any such charges or fees as if they were charges or fees paid under Schedule 2.
- (6) Nothing in this clause affects:
 - (a) any right to a refund arising under the former registration charges legislation (whether before or after the repeal day), or
 - (b) the continued operation of section 17S of the *Road Transport (Vehicle Registration) Act 1997* in respect of charges or fees paid under Part 2A of that Act before the repeal day.

26 Motor vehicle taxes

- (1) Any motor vehicle tax paid in respect of a registration or renewal of registration of a vehicle before the repeal day for a registration period ending after that day is taken to be a motor vehicle tax paid for the unexpired balance of the duration of the registration period.
- (2) Any motor vehicle tax payable in respect of the registration or renewal of registration of a vehicle continues to be payable in accordance with the *Motor Vehicles Taxation Act 1988*.
- (3) In this clause:

motor vehicle tax means any tax imposed under the *Motor Vehicles Taxation Act 1988*.

Division 8 Safety and traffic management

27 Existing approved devices and instruments

- (1) **Existing approved traffic enforcement devices**

Any device that was an approved device under the *Road Transport (Safety and Traffic Management) Act 1999* (or any provisions of that Act) of a kind referred to in Column 1 of the Table to this subclause (an **existing approved traffic enforcement device**) is taken to be an approved traffic enforcement device under this Act approved for the use

referred to in Column 2 opposite the kind of device specified in Column 1.

Table

Column 1	Column 2
Existing approved traffic enforcement device	Corresponding approved use
approved average speed detection device	average speed detection
approved camera detection device	red traffic light detection
approved camera recording device	excess speed imaging
approved digital camera recording device	excess speed imaging
approved speed measuring device	speed measurement
approved traffic lane camera device	traffic lane use detection

- (2) An existing approved traffic enforcement device that has been approved for use as an approved device for the purposes of 2 or more device approval provisions (within the meaning of section 57C of the *Road Transport (Safety and Traffic Management) Act 1999*) is taken to be approved as an approved traffic enforcement device under this Act for each of those uses.

(3) **Existing alcohol or drug testing instruments**

Any device or instrument that was an approved device or instrument for the purposes of the *Road Transport (Safety and Traffic Management) Act 1999* (or any provisions of that Act) of a kind referred to in Column 1 of the Table to this subclause is taken to be an approved device or instrument for the purposes of this Act (or the corresponding provisions of this Act) of the kind referred to in Column 2 opposite the kind of device or instrument specified in Column 1.

Table

Column 1	Column 2
Existing device or instrument	Corresponding device or instrument
approved oral fluid analysing instrument	approved oral fluid analysing instrument
approved oral fluid testing device breath analysing instrument	approved oral fluid testing device breath analysing instrument

Column 1	Column 2
Existing device or instrument	Corresponding device or instrument
a device approved for the carrying out of breath tests	a device approved for the carrying out of breath tests

(4) **Authorised persons**

A police officer or other person who is authorised under a provision of the former road transport legislation to operate, or install and inspect, a device or instrument referred to in Column 1 of the Tables to subclause (1) or (3) is taken to have been authorised under the corresponding provision of the new road transport legislation to operate, or install and inspect, as the case may be, the corresponding device or instrument under this Act.

- (5) Without limiting subclause (4), a police officer who is authorised to carry out breath tests or oral fluid tests under the *Road Transport (Safety and Traffic Management) Act 1999* is taken to be authorised to carry out breath tests or oral fluid tests under Schedule 3 to this Act.

28 Approvals granted by Commissioner of Police

Any approval in force under section 40 of the *Road Transport (Safety and Traffic Management) Act 1999* is taken to be an approval in force under section 115 of this Act.

29 Surrender and forfeiture of prohibited speed measuring articles

- (1) A notice served under a provision of section 49 of the *Road Transport (Safety and Traffic Management) Act 1999* that requires a thing to be done at or by time occurring on or after the repeal day is taken to be a notice served under the corresponding provision of section 120 of this Act.
- (2) An officer of the Authority who is authorised for the purposes of section 49 of the *Road Transport (Safety and Traffic Management) Act 1999* is taken to be an officer authorised for the purposes of section 120 of this Act.

30 Persons authorised to deal with prescribed traffic control devices

- (1) A person who is authorised under section 51 (b) of the *Road Transport (Safety and Traffic Management) Act 1999* to install or display (or to interfere with, alter or remove) a prescribed traffic control device under that Act is taken to be authorised to do the same under section 122 (b) of this Act.

- (2) A person who is authorised under section 53 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* to give directions under that section is taken to be authorised to give directions under section 124 of this Act.

31 Monitoring of heavy vehicles and vehicles carrying dangerous goods

Any person, body, matter or thing approved (other than by the regulations) for the purposes of a provision of Division 2 of Part 5 of the *Road Transport (Safety and Traffic Management) Act 1999* is taken to be approved for the purposes of the corresponding provision of Part 6.1 of this Act.

Note. See also clause 40 regarding the continuing requirement to keep vehicle movement records created under Division 2 of Part 5 of the *Road Transport (Safety and Traffic Management) Act 1999*.

32 Use of samples for accident research

Any research program approved for the purposes of section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* is taken to be a research program approved for the purposes of clause 39 of Schedule 3 to this Act.

Division 9 Existing registers

33 Continuation of existing registers

- (1) Each register under the former road transport legislation (an *existing register*) referred to in Column 1 of the Table to this subclause is taken to be the register for the purposes of this Act (*corresponding register*) referred to in Column 2 opposite the existing register specified in Column 1.

Table

Column 1	Column 2
Existing register	Corresponding register
driver licence register referred to in section 8 (b) of the <i>Road Transport (Driver Licensing) Act 1998</i>	NSW driver licence register
demerit points register under the <i>Road Transport (Driver Licensing) Act 1998</i>	NSW demerit points register
Register of Registrable Vehicles under the <i>Road Transport (Vehicle Registration) Act 1997</i>	NSW registrable vehicles register

Column 1	Column 2
Existing register	Corresponding register
register of written-off vehicles under Part 2AA of the <i>Road Transport (Vehicle Registration) Act 1997</i>	NSW written-off vehicles register
(2)	An existing register that becomes a corresponding register by operation of this clause may continue to include information that was recorded for the purposes of the former road transport Act for which the register was maintained.
(3)	Without limiting any other provision of this Act, the Authority may update or correct information recorded in an existing register that becomes a corresponding register to reflect changes resulting from the enactment of this Act and any repeals or amendments made by a cognate Act.

Division 10 Compliance and enforcement

34 Authorised officers

- (1) Any instrument in force under section 121 of the *Road Transport (General) Act 2005* (an **existing appointment instrument**) that appoints a person as an authorised officer, or a class of persons as authorised officers, for the purposes of that Act is taken to be an instrument made under section 166 of this Act appointing the same person or class of persons as authorised officers under this Act.
- (2) Any instrument in force under section 122 of the *Road Transport (General) Act 2005* that restricts or otherwise limits the exercise of powers by an authorised officer, or a class of authorised officers, in relation to the former road transport legislation is taken to be an instrument made under section 167 of this Act imposing the same kinds of restrictions or limitations in relation to the corresponding provisions of the new road transport legislation.
- (3) Any identification card issued to an authorised officer under section 124 of the *Road Transport (General) Act 2005* whose appointment as such is continued in effect by this clause is taken to be an identification card issued by the Authority for the purposes of section 168 of this Act.
- (4) Any agreement in force under section 127 of the *Road Transport (General) Act 2005* is taken to be an agreement entered into by the Minister under section 171 of this Act.

35 Exercise of identity powers extends to certain matters arising before repeal day

Any power conferred on an authorised officer by Part 7.2 (Identity powers) of this Act is taken to extend to:

- (a) in relation to a power exercisable in relation to a matter arising under or in connection with the new road transport legislation (or a specified provision of that legislation)—a matter arising under or in connection with the former road transport legislation (or a provision of that legislation to which the specified provision corresponds), and
- (b) in relation to a power exercisable in relation to a matter arising under or in connection with an applicable road law, Australian applicable road law or approved road transport compliance scheme within the meaning of this Act (or a specified provision of such a law or scheme)—a matter arising under or in connection with an applicable road law, Australian applicable road law or approved road transport compliance scheme within the meaning of the *Road Transport (General) Act 2005* (or a provision of such a law or scheme to which the specified provision corresponds).

36 Continuation of licence sanctions under former road transport legislation

(1) This clause applies in relation to the following:

- (a) any licence disqualification (a *continuing licence disqualification*) that is:
 - (i) imposed before the repeal day by or under Division 1 of Part 5.4 of the *Road Transport (General) Act 2005*, or
 - (ii) imposed on or after the repeal day by or under Division 1 of Part 5.4 of the *Road Transport (General) Act 2005* (as continued in force by operation of clause 6) in relation to an offence committed against the former road transport legislation,
- (b) any disqualification suspension order (a *continuing disqualification suspension order*) that is:
 - (i) made before the repeal day under Division 2 of Part 5.4 of the *Road Transport (General) Act 2005*, or
 - (ii) made on or after the repeal day under Division 2 of Part 5.4 of the *Road Transport (General) Act 2005* (as continued in force by operation of clause 6) in relation to an offence committed against the former road transport legislation,

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- (c) any declaration (a ***continuing habitual traffic offender declaration***) that:
- (i) comes into force in relation to a person before the repeal day by operation of section 199 of the *Road Transport (General) Act 2005*, or
 - (ii) comes into force in relation to a person on or after the repeal day under section 199 of the *Road Transport (General) Act 2005* (as continued in force by operation of clause 6) in relation to an offence committed against the former road transport legislation,
- (d) any suspension from holding a driver licence (a ***continuing licence suspension***) that is:
- (i) imposed before the repeal day by or under Division 4 of Part 5.4 of the *Road Transport (General) Act 2005*, or
 - (ii) imposed on or after the repeal day by or under Division 4 of Part 5.4 of the *Road Transport (General) Act 2005* (as continued in force by operation of clause 6) in relation to an offence committed against the former road transport legislation.
- (2) A continuing licence disqualification continues to have effect as a disqualification from holding a driver licence for the purposes of Division 1 of Part 7.4 of this Act until such time as the period of disqualification ends or the disqualification is annulled, quashed or set aside (whichever is the sooner).
- (3) A continuing disqualification suspension order continues to have effect as a disqualification suspension order for the purposes of Division 2 of Part 7.4 of this Act until the order ceases to have effect under that Division or the order is annulled, quashed or set aside (whichever is the sooner).
- (4) A continuing habitual traffic offender declaration continues to have effect as a declaration that a person is an habitual traffic offender for the purposes of Division 3 of Part 7.4 of this Act until such time as the period of declaration ends or the declaration is annulled, quashed or set aside (whichever is the sooner).
- (5) A continuing licence suspension continues to have effect as a suspension of a driver licence for the purposes of the provisions of Division 4 of Part 7.4 of this Act that correspond to the provisions of the *Road Transport (General) Act 2005* under which the suspension was made until such time as the suspension ceases to have effect or the suspension is annulled, quashed or set aside (whichever is the sooner).

37 Downgrading of driver licences

Section 226 of this Act extends to a driver licence that is cancelled as a special measure (within the meaning of section 207 of the *Road Transport (General) Act 2005*) before the repeal day or under the former road transport legislation (as continued in force by operation of clause 6) on or after that day.

38 Continuation of certain vehicle sanctions

- (1) Part 7.6 (Sanctions concerning vehicles) of this Act extends to:
 - (a) a sanctionable offence within the meaning of the *Road Transport (General) Act 2005* committed, or alleged to have been committed, before the repeal day in respect of which a sanction could have been (but had not yet been) imposed under Division 2 of Part 5.5 of that Act as if it were a sanctionable offence within the meaning of Part 7.6 of this Act, and
 - (b) a motor vehicle production notice issued under Division 2 of Part 5.5 of the *Road Transport (General) Act 2005* before the repeal day that specifies a motor vehicle production date occurring on or after the repeal day as if the notice had been issued under the corresponding provisions of Part 7.6 of this Act, and
 - (c) a number plate production notice issued under Division 2 of Part 5.5 of the *Road Transport (General) Act 2005* before the repeal day that specifies a number plate production date occurring on or after the repeal day as if the notice had been issued under the corresponding provisions of Part 7.6 of this Act, and
 - (d) a number plate confiscation notice issued under Division 2 of Part 5.5 of the *Road Transport (General) Act 2005* before the repeal day that specifies a number plate production date occurring on or after the repeal day as if the notice had been issued under the corresponding provisions of Part 7.6 of this Act.
- (2) A number plate confiscation period in force with respect to a vehicle under Division 2 of Part 5.5 of the *Road Transport (General) Act 2005* continues in effect until its expiry as if it were a number-plate confiscation period imposed under the corresponding provisions of Part 7.6 of this Act.
- (3) Any motor vehicle impounded, or number-plates confiscated, under Division 2 of Part 5.5 of the *Road Transport (General) Act 2005* may continue to be impounded or confiscated (and otherwise dealt with) as if it had been impounded or confiscated under the corresponding provisions of this Part 7.6 of this Act.

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- (4) Any motor vehicle that was forfeited under Division 2 of Part 5.5 of the *Road Transport (General) Act 2005* may be disposed of or otherwise dealt with as if it had been forfeited under the corresponding provisions of Part 7.6 of this Act.

39 Video and photographic devices approved by Commissioner of Police for certain camera recorded offences

Any photographic or video equipment approved by the Commissioner of Police for the purposes of paragraph (d) of the definition of *camera recorded offence* in section 179 (12) of the *Road Transport (General) Act 2005* is taken to be equipment that has been approved for the purposes of paragraph (e) of the definition of *camera recorded offence* in section 183 (1) of this Act.

Division 11 Miscellaneous

40 Requirement concerning keeping and production of records or other documents under former road transport legislation

- (1) Any requirement under a provision of the former road transport legislation for a person (other than the Authority) to keep a record or other document for a period (the *original period*) that has not expired before the repeal day is taken to continue as a requirement to keep the record or other document under the corresponding provision of the new road transport legislation for the unexpired balance of the duration of the original period.
- (2) Any power conferred on a person by a provision of the new road transport legislation to require the production of a record or other document (or a copy of such a record or document) extends to a record or other document created before the repeal day that could have been required to be produced under a former corresponding provision if that provision had continued in force.

41 Certain authorities and delegations taken to be delegations under this Act

Any person who is:

- (a) authorised by or under any former road transport legislation to carry out any function of the Authority under that legislation, or
- (b) a delegate of the Authority in respect of the exercise of any such function,

is taken to be a delegate of the Authority under section 273 of this Act in respect of any corresponding function under this Act or the statutory rules.

42 Appointments, approvals and authorisations of persons under former road transport legislation

Subject to this Part, any person (or person belonging to a class of persons) who is appointed, approved or otherwise authorised for the purposes of a provision of the former road transport legislation (including a definition) in relation to the exercise of specified functions is taken to be similarly appointed, approved or authorised for the purposes of the corresponding provision (if any) of this Act.

43 Updating of references to former road transport legislation

- (1) In any other Act or in any instrument made under another Act (and except as provided by subclauses (2), (3) and (4)):
 - (a) subject to paragraph (b), a reference to a former road transport Act is to be read as a reference to this Act, and
 - (b) a reference to a provision of a former road transport Act is to be read as a reference to the corresponding provision (if any) of this Act.
- (2) A reference in any other Act or in any instrument made under another Act to a provision of the *Road Transport (General) Act 2005* that has not been repealed by a cognate Act is to be read as a reference to that provision in the *Road Transport (Vehicle and Driver Management) Act 2005*.
- (3) A reference in any other Act or in any instrument made under another Act to a provision of the *Road Transport (General) Regulation 2005* that has not been repealed by a cognate Act is to be read as a reference to that provision in the *Road Transport (Vehicle and Driver Management) Regulation 2005*.
- (4) A reference in any Act or in any other instrument to:
 - (a) a provision of the *Road Transport (General) Regulation 2005* that has been remade in the *Road Transport (General) Regulation 2013*, or
 - (b) a provision of the *Road Transport (Safety and Traffic Management) Regulation 1999*,is to be read as a reference to the corresponding provision of the *Road Transport (General) Regulation 2013*.
- (5) Subclauses (1)–(4) do not apply to the following:
 - (a) a reference in a cognate Act,
 - (b) a reference in the *Road Transport (Vehicle and Driver Management) Act 2005* or *Road Transport (Vehicle and Driver Management) Regulation 2005*,

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- (c) a reference in the *Road Transport (General) Regulation 2013*,
 - (d) a reference in a provision of another Act or statutory rule made under another Act (as amended, substituted or inserted by a cognate Act),
 - (e) such references to a former road transport Act (or a provision of a former road transport Act) in another Act or a statutory rule made under another Act as may be prescribed by the statutory rules under this Act for the subclause of this clause concerned.

44 Statutory rules may update certain legislative provisions enacted or made before repeal day

- (1) Any other Act, or a statutory rule made under any other Act, contains an *outdated new legislative provision* for the purposes of this clause if:
 - (a) the provision concerned contains a reference (an *outdated reference*) to any Act or statutory rule that formed part of the road transport legislation (or to any provision of such an Act or statutory rule) that will or has become out of date or otherwise incorrect because of the repeal or renaming of any of the former road transport legislation or the enactment of this Act and the cognate Acts, and
 - (b) the provision was enacted or made (or the outdated reference in the provision was inserted by an Act or statutory rule that was enacted or made) on or after the day on which the Bill for this Act was first introduced into Parliament, but before the repeal day.
- (2) The statutory rules may amend any other Act, or a statutory rule made under any other Act, that contains an outdated new legislative provision to replace the outdated reference in the provision with a reference to the corresponding Act or statutory rule (or the corresponding provision or provisions of an Act or statutory rule) that form part of the new road transport legislation.

45 Use of existing document for transitional periods

- (1) The statutory rules may make provision for or with respect to the use of existing documents for the purposes of the new road transport legislation for transitional periods.
- (2) A document is an *existing document* for the purposes of subclause (1) if it is a document prepared before the repeal day for use in connection with the administration or enforcement of the former road transport legislation.

46 General savings provision

Subject to this Part and the statutory rules, anything done under or for the purposes of a provision of the former road transport legislation is, to the extent that the thing has effect immediately before the repeal of the provision, taken to have been done under or for the purposes of the corresponding provision (if any) of the new road transport legislation.